



3. Title VII bars sex discrimination with respect to an employee's "compensation, terms, conditions, or privileges of employment," including discrimination in the terms of an employer-sponsored health care plan. 42 U.S.C. § 2000e-2(a)(1).

4. The MHRA likewise bars sex discrimination with respect to an employee's "compensation, terms, upgrading, conditions, facilities, or privileges of employment," including discrimination in the terms of an employer-sponsored health care plan. Minn. Stat. § 363A.08, subd. 2.

5. Section 1557 of the Affordable Care Act bars sex discrimination in any health program or activity, any part of which receives "Federal financial assistance, including credits, subsidies, or contracts of insurance"; in "any program or activity that is administered by an Executive Agency"; and in any entity established under Title I of the Affordable Care Act or its amendments. 42 U.S.C. §18116(a).

6. Defendant Essentia Health and Defendant Innovis Health, LLC, dba Essentia Health West (collectively, "Essentia") discriminated against Plaintiff Brittany R. Tovar, an Essentia employee, in violation of both Title VII and the MHRA, by categorically excluding any coverage for "[s]ervices and/or surgery for gender reassignment" in the Essentia Health Employee Medical Plan ("the Plan").

7. Defendant HealthPartners, Inc. ("HealthPartners") discriminated against Plaintiff Brittany R. Tovar in violation of Section 1557 of the Affordable Care Act by serving as the third party administrator for the Essentia Health Employee Medical Plan and enforcing the Plan's categorical exclusion of any "[s]ervices and/or surgery for gender reassignment."

## **PARTIES**

8. Plaintiff Brittany R. Tovar (“Plaintiff” or “Tovar”) is a citizen of the United States and a resident of Norman County, Minnesota. At all relevant times, Tovar was an employee of Defendant Essentia Health and/or Defendant Innovis, LLC, dba Essentia Health West, as that term is defined in Title VII, 42 U.S.C. § 2000e(f).

9. Defendant Essentia Health is a corporation headquartered at 502 E. Second Street, Duluth, Minnesota, which does business throughout the state of Minnesota, as well as in North Dakota, Wisconsin, and Idaho.

10. Defendant Innovis, LLC, dba Essentia Health West, is, upon information and belief, a wholly-owned subsidiary of Defendant Essentia Health which does business in the state of Minnesota.

11. At all relevant times, Defendant Essentia Health and Defendant Innovis, LLC, dba Essentia Health West (collectively, “Essentia”) served as Tovar’s employer, as that term is defined in Title VII, 42 U.S.C. § 2000e(b) and Minn. Stat. § 363A.03, subd. 16.

12. Defendant HealthPartners, Inc. (“HealthPartners”) is a corporation headquartered at 8170 33rd Ave. S., Bloomington, Minnesota 55425.

13. At all relevant times, HealthPartners received federal financial assistance such as credits, subsidies, or contracts of insurance within the meaning of Section 1557, 42 U.S.C. §18116(a), because it issues qualified health care plans on MNsure, Minnesota’s state health insurance exchange, and its MNsure plan enrollees are provided with advance payments of premium tax credits and/or cost sharing reductions.

### **JURISDICTION AND VENUE**

14. This Court has original jurisdiction over Plaintiff's claims arising under Title VII, 42 U.S.C. § 2000e-5(f)(3), and under Section 1557, 42 U.S.C. § 18116(a).

15. The Court is also granted jurisdiction over Plaintiff's federal claims under 28 U.S.C. § 1331.

16. The Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367(a).

17. Venue is proper under 28 U.S.C. § 1391 because the discrimination took place in this district and Defendants are headquartered in and conduct business within this district.

### **SATISFACTION OF STATUTORY PREREQUISITES**

18. On or about May 1, 2015, Plaintiff filed a charge of sex discrimination against Essentia with the United States Equal Employment Opportunities Commission ("EEOC"), which receives and investigates charges of discrimination under Title VII.

19. On January 13, 2016, the EEOC issued a determination letter that found that Essentia discriminated against Plaintiff based on sex when she "was denied medical-related services for her child, as a beneficiary, under [Essentia's] sponsored Health Insurance Plan, based on the child's gender identity." The EEOC further determined that there is "reasonable cause to believe that [Essentia's] Health Insurance Plans exclude coverage of services for gender reassignment, including surgery or prescription

medications; and as such, they discriminate against individuals, as a class, based on sex in violation of Title VII.”

20. On January 15, 2016, the EEOC issued Plaintiff a Notice of Right to Sue.

### **FACTUAL ALLEGATIONS**

21. Plaintiff Brittany R. Tovar has been employed by Essentia since September 24, 2010, first as a registered nurse and currently as a family nurse practitioner.

22. Tovar’s employee benefits at Essentia include health insurance provided through the Essentia Health Employee Medical Plan (“the Plan”).

23. The Plan corresponds to an insurance policy offered to employers by HealthPartners and known as Policy No. G008HPC-03.

24. HealthPartners also serves as the third party administrator for the Plan, under contract to Essentia.

25. The Plan contains a categorical exclusion barring any insurance coverage for “[s]ervices and/or surgery for gender reassignment,” regardless of medical necessity.

26. Tovar has a teenage son who has been a beneficiary of the Plan since October 1, 2014.

27. In November 2014, Tovar’s son was diagnosed with gender dysphoria, a condition recognized in the Diagnostic and Statistical Manual, fifth edition (“DSM-5”), as arising when an individual’s gender identity differs from the gender assigned at birth.

28. In current usage such individuals may be referred to as “transgender,” while individuals whose gender identity is aligned with the gender they were assigned at birth may be referred to as “cisgender.”

29. According to the DSM-5, the symptoms of gender dysphoria include “clinically significant distress or impairment in social, occupational, or other important areas of functioning.”

30. The symptoms of gender dysphoria have been shown to be relieved by social and legal transition to the gender with which the individual identifies, and by medical treatments such as mental health counseling, hormone therapy, and gender reassignment surgery.

31. Because of the Plan’s categorical exclusion of “[s]ervices and/or surgery for gender reassignment,” Tovar’s transgender son has been denied insurance coverage for health care that his providers have deemed medically necessary.

32. Beginning in March 2015, Tovar used the pre-authorization and appeal processes outlined under the Plan to seek clarification regarding the enforcement of the exclusion. In her communications to Essentia and HealthPartners, she emphasized the serious repercussions for her son if he was not able to access medically necessary care.

33. In a letter dated April 9, 2015, a representative of HealthPartners reaffirmed HealthPartners’ intent to enforce the exclusion. The representative stated in the letter that HealthPartners was “not questioning whether these services are medically necessary or appropriate” but was nonetheless enforcing the terms of the Plan.

34. In some instances, the denial of insurance coverage under the Plan has meant Tovar incurred costs – paying out of pocket for services or medications – that she would not otherwise have incurred. In other instances, the denial of insurance has meant that Tovar’s son was unable to access medically necessary care.

35. Because of his gender dysphoria, Tovar's son was prescribed a drug known as Lupron.

36. Among other things, Lupron is medically indicated for treatment of symptoms associated with dysmenorrhea, or painful menstruation.

37. Lupron is also medically indicated to temporarily suspend menstruation, in individuals diagnosed with gender dysphoria whose menses contribute to their gender dysphoria and mental distress. This was the basis for the prescription given to Tovar's son.

38. Essentia and HealthPartners refused to cover Lupron for Tovar's son, despite the prescription from his medical provider indicating that it was medically necessary, because of the Plan's categorical exclusion of "[s]ervices and/or surgery for gender reassignment."

39. Had the provider indicated that the Lupron was prescribed for painful dysmenorrhea rather than gender dysphoria, it would have been covered by the Plan.

40. Tovar was informed that it would cost approximately \$9000 to purchase Lupron for her son in the absence of coverage under the Plan. This was unaffordable for her, and as a result, her son was not able to obtain the medical benefit of Lupron.

41. Tovar and her family suffered additional harms as well. Tovar's son was angry, hurt, and concerned about burdening his family financially. He also worried about the impact of the coverage dispute on his mother's employment. Tovar suffered worry, anger, disappointment, and sleepless nights. It was more difficult for her to focus on her

work, and she suffered a sharp increase in migraines. Her concerns for her son led her to cry at work in between patients. She reduced her hours at work because of the stress.

42. Providers also prescribed Androderm, a form of testosterone, to treat Tovar's son for gender dysphoria.

43. As with the prescription for Lupron, the prescription for Androderm was rejected due to the categorical exclusion in the Plan. Had the Androderm been prescribed for a male patient suffering a condition other than gender dysphoria, it would have been approved. The rejection specifically indicated that Androderm was "FOR USE BY MALES ONLY" and that this "Product/Service [Was] Not Covered for Patient Gender."

44. As a result, Tovar was forced to pay for Androderm out of pocket.

45. While Essentia later agreed to provide Tovar with coverage for Androderm as a one-time exception, it kept the categorical exclusion in the Plan.

46. In December 2015, when Tovar contacted HealthPartners Member Services regarding pre-authorization for gender reassignment surgery for her son, she was told that the surgery would not be authorized, due to the Plan's continuing exclusion of "[s]ervices and/or surgery for gender reassignment."

47. Had the requested surgery been recommended by a medical provider for a purpose other than gender reassignment related to gender dysphoria – for instance, a mastectomy for a woman suffering from breast cancer – it would have been covered by the Plan.



48. Tovar and her family continue to suffer financial and emotional harm due to the Plan's discriminatory exclusion of coverage for medical care needed by Tovar's son.

**COUNT I**  
**VIOLATION OF TITLE VII**  
*42 U.S.C. § 2000e et seq.*

49. Plaintiff incorporates by reference the preceding paragraphs of the Complaint.

50. Defendant Essentia Health and Defendant Innovis, LLC, dba Essentia Health West (collectively, "Essentia") served as Tovar's employer, as that term is defined in Title VII, 42 U.S.C. § 2000e(b).

51. Plaintiff is an employee of Essentia, as term is defined in Title VII, 42 U.S.C. § 2000e(f).

52. Title VII bars sex discrimination with respect to an employee's "compensation, terms, conditions, or privileges of employment," 42 U.S.C. § 2000e-2(a)(1). This includes discrimination in the terms of an employer-sponsored health care plan such as the Essentia Health Employee Medical Plan ("the Plan").

53. Essentia violated Title VII's bar on sex discrimination, and specifically the bar on discrimination based on gender identity, by categorically excluding any coverage for "[s]ervices and/or surgery for gender reassignment" from the Plan.

54. Essentia's violation of Title VII caused Tovar and her family economic harm and emotional distress.

**COUNT II**  
**VIOLATION OF MINNESOTA HUMAN RIGHTS ACT**  
*Minn. Stat. § 363A.01 et seq.*

55. Plaintiff incorporates by reference the preceding paragraphs of the Complaint.

56. Defendant Essentia Health and Defendant Innovis, LLC, dba Essentia Health West (collectively, “Essentia”) served as Tovar’s employer, as that term is defined in the Minnesota Human Rights Act (“MHRA”), Minn. Stat. § 363A.03, subd. 16.

57. Plaintiff is an employee of Essentia, as term is defined in the MHRA, Minn. Stat. § 363A.03, subd. 15.

58. The MHRA bars sex discrimination with respect to an employee’s “compensation, terms, upgrading, conditions, facilities, or privileges of employment.” Minn. Stat. § 363A.08, subd. 2. This includes discrimination in the terms of an employer-sponsored health care plan such as the Essentia Health Employee Medical Plan (“the Plan”).

59. By categorically excluding any coverage for “[s]ervices and/or surgery for gender reassignment” from the Plan, Essentia violated the MHRA’s bar on sex discrimination, and specifically the bar on discrimination based on gender identity referenced in Minn. Stat. § 363A.08, subd. 44 (barring discrimination based on “having or being perceived as having a self-image or identity not traditionally associated with one’s biological maleness or femaleness”).

60. Essentia’s violation of the MHRA caused Tovar and her family economic harm and emotional distress.

**COUNT III**  
**VIOLATION OF THE AFFORDABLE CARE ACT, § 1557**  
***42 U.S.C. § 18116***

61. Plaintiff incorporates by reference the preceding paragraphs of the Complaint.

62. Defendant HealthPartners Inc. (“HealthPartners”) constitutes a “health program or activity, any part of which is receiving Federal financial assistance” as governed by Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116(a), because it issues qualified health care plans on MNsure, Minnesota’s state health insurance exchange, and its MNsure plan enrollees are provided with advance payments of premium tax credits and/or cost sharing reductions.

63. HealthPartners discriminated against Plaintiff in violation of Section 1557 of the Affordable Care Act by serving as the third party administrator for the Essentia Health Employee Medical Plan and enforcing the Plan’s discriminatory exclusion of any “[s]ervices and/or surgery for gender reassignment.”

64. HealthPartners’ violation of Section 1557 caused Tovar and her family economic harm and emotional distress.

**JURY DEMAND**

65. Plaintiff demands a jury trial on all claims for which a jury trial is available.

### **RELIEF REQUESTED**

Plaintiff respectfully requests that this Court enter judgment against the Defendants and award the following relief:

1. Declare that Essentia's actions violate Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.
2. Declare that Essentia's actions violate the Minnesota Human Rights Act, Minn. Stat. § 363A.01 et seq. ("MHRA").
3. Declare that HealthPartners' actions violate Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116.
4. Enjoin and restrain Defendants, their agents, employees, successors, and all others acting in concert with them, from discriminating on the basis of sex by depriving any employees of the full enjoyment of the benefits of employment with Essentia.
5. Order Defendants to take such affirmative steps as may be necessary to restore, as nearly as practicable, Plaintiff to the position she would have been in but for their discriminatory conduct.
6. Order Defendants to take affirmative action to prevent the reoccurrence of the discriminatory conduct in the future and to eliminate, to the extent as practicable, the effects of their unlawful practices.
7. Award Plaintiff compensatory damages, statutory damages, punitive damages, and other appropriate relief as permitted by law.
8. Award pre-judgment and post-judgment interest on monetary relief.

9. Award the costs of bringing this suit, including reasonable attorney's fees and costs where allowed by law.

10. Award all other relief to which Plaintiff may be entitled which the Court deems just and equitable.

Dated: January 15, 2016

Respectfully submitted,

**GENDER JUSTICE**

By: *s/ Jill R. Gaulding*

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