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MEMORANDUM

TO: The Pennsylvania House of Representatives

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: December 8, 2017

RE: OPPOSITION TO HOUSE BILL 1933 (TOPPER)

[House Bill 1933](#) would prohibit CHIP and Medicaid from covering a range of transition-related services for the nearly three million Pennsylvanians, children and adults, who are insured through these programs. Specifically, it would prohibit access to counseling services, prescription drugs, physician services, and in-patient and out-patient hospital services, and surgical procedures – even when a doctor determines that these services constitute medically necessary care.

On behalf of the 53,000 members of the ACLU of Pennsylvania, I respectfully urge you to vote ‘no’ on House Bill 1933 for the following reasons:

Denying people healthcare based on who they are is uniquely cruel and discriminatory
Regardless of what kind of insurance a transgender person has, they should be able to access the medical care that they and their doctors agree is necessary for their health and well-being. HB 1933 puts essential and, in some cases, [life-saving medical care](#)¹ out of reach for transgender Pennsylvanians who are insured through CHIP or Medicaid.

HB 1933 is blatantly unconstitutional

Instead of banning a specific procedure, HB 1933 prevents a class of people – transgender men, women and children – from accessing services that are covered for other Pennsylvanians. Excluding coverage for medically necessary transition-related health care unconstitutionally [discriminates against transgender individuals](#)² in violation of the Fourteenth Amendment, the Civil Rights Act of 1964, and several other federal anti-discrimination laws. Many [federal courts](#)³, including [one in Pennsylvania](#),⁴ have already held that discrimination against transgender individuals is unconstitutional.

¹ National Center for Transgender Equality. *National Transgender Discrimination Survey*, 2012.

transequality.org/issues/resources/national-transgender-discrimination-survey-executive-summary

² Cruz v. Zucker (2016). <http://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2014cv04456/428588/134/>

³ www.aclupa.org/files/1215/1276/1821/RESOURCES_HB_1933_Trans-Related_Case_Law.pdf

⁴ Evancho v. Pine-Richland School District (2017). <https://law.justia.com/cases/federal/district-courts/pennsylvania/pawdce/2:2016cv01537/233720/76/>

The language of the bill is also illegal. The [underlying statute](#)⁵ that authorized both Medicaid and CHIP requires states to cover all medically-necessary care. In other states, patients have successfully challenged policies that prohibited coverage for transition-related care.

HB 1933 would invite costly litigation

Any state or health insurance program or employer that implements bans on medically necessary health care – including health care for transgender people – will be subject to costly litigation. Litigation over bans on health care will cost the state millions of dollars in attorney’s fees and costs related to depositions, trials, and expert costs. Expert reports alone can cost up to \$20,000 and with similar cases requiring 5-10 expert reports on each side, the price tag for Pennsylvania taxpayers rises quickly.

Trans-related services are medically necessary, according to a near-unanimous consensus among medical organizations and professionals

HB 1933 proposes a ban on transition-related coverage that is regressive and out of step with the medical, legal, and national consensus on health care. [Every major medical organization](#) and an overwhelming consensus of medical experts, agree that medical treatment for gender dysphoria is medically necessary, safe, and effective. In keeping with this consensus and contemporary standards of care, Medicare, Medicaid, and private insurance policies across the country routinely cover transition-related care as medically necessary treatment.

Regardless of what kind of insurance a transgender person has, they should be able to access the medical care that they and their doctors agree is necessary for their health and well-being. HB 1933 puts essential and, in some cases, life-saving medical care out of reach for transgender Pennsylvanians who are insured through CHIP or Medicaid.

For these reasons, we urge you to vote NO on HB 1933.

⁵ [42 U.S.C. § 1396a\(a\)\(10\)\(A\); 42 U.S.C. § 1396a\(a\)\(10\)\(B\) and 42 U.S.C. §§ 1396a\(a\)\(17\), 1396a\(a\)\(10\)\(B\)\(i\). http://www.abc-pa.org/PDFS/Medicaid-eligible%20children%20have%20enforceable%20rights%20to%20obtain%20EPSDT%20services.pdf](http://www.abc-pa.org/PDFS/Medicaid-eligible%20children%20have%20enforceable%20rights%20to%20obtain%20EPSDT%20services.pdf)