

**2SSB 5313 - H AMD 456**

By Representative Cody

**ADOPTED 03/24/2021**

1 Strike everything after the enacting clause and insert the  
2 following:

3 **"Sec. 1.** RCW 49.60.178 and 2020 c 52 s 9 are each amended to  
4 read as follows:

5 (1) It is an unfair practice for any person whether acting for  
6 himself, herself, or another in connection with an insurance  
7 transaction or transaction with a health maintenance organization to  
8 cancel or fail or refuse to issue or renew insurance or a health  
9 maintenance agreement to any person because of sex, marital status,  
10 sexual orientation, race, creed, color, national origin, citizenship  
11 or immigration status, or the presence of any sensory, mental, or  
12 physical disability or the use of a trained dog guide or service  
13 animal by a person with disabilities: PROVIDED, That a practice which  
14 is not unlawful under RCW 48.30.300, 48.44.220, (~~(or)~~) 48.46.370, or  
15 48.43.0128 does not constitute an unfair practice for the purposes of  
16 this section. For the purposes of this section, "insurance  
17 transaction" is defined in RCW 48.01.060, health maintenance  
18 agreement is defined in RCW 48.46.020, and "health maintenance  
19 organization" is defined in RCW 48.46.020.

20 (2) The fact that such unfair practice may also be a violation of  
21 chapter 48.30, 48.43, 48.44, or 48.46 RCW does not constitute a  
22 defense to an action brought under this section.

23 (3) The insurance commissioner, under RCW 48.30.300 and  
24 48.43.0128, and the human rights commission, under chapter 49.60 RCW,  
25 shall have concurrent jurisdiction under this section and shall enter  
26 into a working agreement as to procedure to be followed in complaints  
27 under this section.

28 **Sec. 2.** RCW 41.05.017 and 2019 c 427 s 21 are each amended to  
29 read as follows:

30 Each health plan that provides medical insurance offered under  
31 this chapter, including plans created by insuring entities, plans not

1 subject to the provisions of Title 48 RCW, and plans created under  
2 RCW 41.05.140, are subject to the provisions of RCW 48.43.500,  
3 70.02.045, 48.43.505 through 48.43.535, 48.43.537, 48.43.545,  
4 48.43.550, 70.02.110, 70.02.900, 48.43.190, 48.43.083, 48.43.0128,  
5 and chapter 48.49 RCW.

6 **Sec. 3.** RCW 48.43.0128 and 2020 c 228 s 9 are each amended to  
7 read as follows:

8 (1) A health carrier offering a nongrandfathered health plan or a  
9 plan deemed by the commissioner to have a short-term limited purpose  
10 or duration, or to be a student-only plan that is guaranteed  
11 renewable while the covered person is enrolled as a regular, full-  
12 time undergraduate student at an accredited higher education  
13 institution may not:

14 (a) In its benefit design or implementation of its benefit  
15 design, discriminate against individuals because of their age,  
16 expected length of life, present or predicted disability, degree of  
17 medical dependency, quality of life, or other health conditions; and

18 (b) With respect to the health plan or plan deemed by the  
19 commissioner to have a short-term limited purpose or duration, or to  
20 be a student-only plan that is guaranteed renewable while the covered  
21 person is enrolled as a regular, full-time undergraduate student at  
22 an accredited higher education institution, discriminate on the basis  
23 of race, color, national origin, disability, age, sex, gender  
24 identity, or sexual orientation.

25 (2) Nothing in this section may be construed to prevent (~~an~~  
26 ~~issuer~~) a carrier from appropriately utilizing reasonable medical  
27 management techniques.

28 (3) For health plans issued or renewed on or after January 1,  
29 2022:

30 (a) A health carrier may not deny or limit coverage for gender  
31 affirming treatment when that treatment is prescribed to an  
32 individual because of, related to, or consistent with a person's  
33 gender expression or identity, as defined in RCW 49.60.040, is  
34 medically necessary, and is prescribed in accordance with accepted  
35 standards of care.

36 (b) A health carrier may not apply categorical cosmetic or  
37 blanket exclusions to gender affirming treatment. When prescribed as  
38 medically necessary gender affirming treatment, a health carrier may  
39 not exclude as cosmetic services facial feminization surgeries and

1 other facial gender affirming treatment, such as tracheal shaves,  
2 hair electrolysis, and other care such as mastectomies, breast  
3 reductions, breast implants, or any combination of gender affirming  
4 procedures, including revisions to prior treatment.

5 (c) A health carrier may not issue an adverse benefit  
6 determination denying or limiting access to gender affirming  
7 services, unless a health care provider with experience prescribing  
8 or delivering gender affirming treatment has reviewed and confirmed  
9 the appropriateness of the adverse benefit determination.

10 (d) Health carriers must comply with all network access rules and  
11 requirements established by the commissioner.

12 (4) For the purposes of this section, "gender affirming  
13 treatment" means a service or product that a health care provider, as  
14 defined in RCW 70.02.010, prescribes to an individual to treat any  
15 condition related to the individual's gender identity and is  
16 prescribed in accordance with generally accepted standards of care.  
17 Gender affirming treatment must be covered in a manner compliant with  
18 the federal mental health parity and addiction equity act of 2008 and  
19 the federal affordable care act. Gender affirming treatment can be  
20 prescribed to two spirit, transgender, nonbinary, intersex, and other  
21 gender diverse individuals.

22 (5) Nothing in this section may be construed to mandate coverage  
23 of a service that is not medically necessary.

24 (6) By December 1, 2022, the commissioner, in consultation with  
25 the health care authority and the department of health, must issue a  
26 report on geographic access to gender affirming treatment across the  
27 state. The report must include the number of gender affirming  
28 providers offering care in each county, the carriers and medicaid  
29 managed care organizations those providers have active contracts  
30 with, and the types of services provided by each provider in each  
31 region. The commissioner must update the report biannually and post  
32 the report on its website.

33 (7) The commissioner shall adopt any rules necessary to implement  
34 subsections (3), (4), and (5) of this section.

35 (8) Unless preempted by federal law, the commissioner shall adopt  
36 any rules necessary to implement subsections (1) and (2) of this  
37 section, consistent with federal rules and guidance in effect on  
38 January 1, 2017, implementing the patient protection and affordable  
39 care act.

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 74.09

2    RCW to read as follows:

3        (1) In the provision of gender affirming care services through  
4    programs under this chapter, the authority, managed care plans, and  
5    providers that administer or deliver such services may not  
6    discriminate in the delivery of a service provided through a program  
7    of the authority based on the covered person's gender identity or  
8    expression.

9        (2) Beginning January 1, 2022:

10       (a) The authority and any managed care plans delivering or  
11    administering services purchased or contracted for by the authority  
12    may not apply categorical cosmetic or blanket exclusions to gender  
13    affirming treatment.

14       (b) Facial feminization surgeries and facial gender affirming  
15    treatment, such as tracheal shaves, hair electrolysis, and other care  
16    such as mastectomies, breast reductions, breast implants, or any  
17    combination of gender affirming procedures, including revisions to  
18    prior treatment, when prescribed as gender affirming treatment, may  
19    not be excluded as cosmetic.

20       (c) The authority and managed care plans administering services  
21    purchased or contracted for by the authority may not issue an adverse  
22    benefit determination denying or limiting access to gender affirming  
23    treatment, unless a health care provider with experience prescribing  
24    or delivering gender affirming treatment has reviewed and confirmed  
25    the appropriateness of the adverse benefit determination.

26       (d) If the authority and managed care plans administering  
27    services purchased or contracted for by the authority do not have an  
28    adequate network for gender affirming treatment, they shall ensure  
29    the delivery of timely and geographically accessible medically  
30    necessary gender affirming treatment at no greater expense than if  
31    they had an in-network, geographically accessible provider available.  
32    This includes, but is not limited to, providing case management  
33    services to secure out-of-network gender affirming treatment options  
34    that are available to the enrollee in a timely manner within their  
35    geographic region. The enrollee shall pay no more than the same cost  
36    sharing that the enrollee would pay for the same covered services  
37    received from an in-network provider.

38       (3) For the purposes of this section, "gender affirming  
39    treatment" means a service or product that a health care provider, as  
40    defined in RCW 70.02.010, prescribes to an individual to support and

1 affirm the individual's gender identity. Gender affirming treatment  
2 includes, but is not limited to, treatment for gender dysphoria.  
3 Gender affirming treatment can be prescribed to two spirit,  
4 transgender, nonbinary, and other gender diverse individuals.

5 (4) Nothing in this section may be construed to mandate coverage  
6 of a service that is not medically necessary.

7 (5) The authority shall adopt rules necessary to implement this  
8 section.

9 NEW SECTION. **Sec. 5.** This act shall be known and cited as the  
10 Gender Affirming Treatment Act."

11 Correct the title.

EFFECT: (1) Names the act the Gender Affirming Treatment Act.

(2) Modifies the requirement that a health carrier, a plan offered to public employees, Medicaid managed care plans, and the health carrier ensure that prior to issuing an adverse benefit determination a health care provider with experience prescribing and delivering gender affirming treatment approve the determination by replacing it with a provision stating that these entities may not issue an adverse benefit determination denying or limiting access to gender affirming care, unless a health care provider with experience prescribing or delivering gender affirming care has reviewed and confirmed the appropriateness of the determination.

(3) Requires the Health Care Authority to adopt rules.

(4) Makes technical corrections.

(5) Moves back the date for when the requirements regarding coverage of gender affirming treatment for Medicaid managed care organizations and the Health Care Authority go into effect to January 1, 2022.

(6) Moves back the date the Office of the Insurance Commissioner must submit a report on geographic access to gender affirming treatment to December 1, 2022.

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