

SENATE BILL REPORT

SB 5313

As of February 3, 2021

Title: An act relating to health insurance discrimination.

Brief Description: Concerning health insurance discrimination.

Sponsors: Senators Liias, Randall, Darneille, Das, Dhingra, Frockt, Hunt, Keiser, Kuderer, Lovelett, Nguyen, Nobles, Pedersen, Robinson, Stanford, Van De Wege and Wilson, C..

Brief History:

Committee Activity: Health & Long Term Care: 2/03/21.

Brief Summary of Bill

- Establishes that it is an unfair practice for a health carrier to deny coverage for medically necessary gender affirming treatment, or apply blanket exclusions to gender affirming treatment.
- Requires health carriers to ensure access to medically necessary gender affirming treatment.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Staff: Greg Attanasio (786-7410)

Background: Section 1557 of the federal Patient Protection and Affordable Care Act (ACA) prohibits discrimination on the basis of race, color, national origin, sex, age, or disabilities in health programs receiving federal funding, health programs administered directly by the federal government, and qualified health plans offered on health benefit exchanges. Federal rules implementing this requirement prohibit discrimination in the issuance of health plans, the denial or limitation of coverage, and marketing practices. Rules also prohibit discrimination against transgender individuals and prohibit insurers from categorically excluding gender transition services.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

In 2016, a federal district court issued a nationwide injunction enjoining the enforcement of the federal rules prohibiting discrimination on the basis of gender identity or termination of pregnancy—*Franciscan Alliance, Inc. v. Burwell* (2016). The court subsequently stayed its ruling and in 2019, the United States Department of Health and Human Services (HHS) proposed rules clarifying the scope of the ACA's nondiscrimination provisions. In June 2020, HHS issued final regulations implementing Section 1557, which significantly narrows the scope of a rule issued in 2016 by the Obama Administration. The rules, among other provisions, removed gender identity and sex stereotyping from the definition of prohibited sex-based discrimination and eliminated the provision that prohibits a health plan from categorically or automatically excluding or limiting coverage for health services related to gender transition. Federal courts in New York and Washington, DC have since blocked the implementation of the 2020 HHS rules relying on an August 2020 Supreme Court ruling, in *Bostock v Clayton County, Georgia* (2020), that found discrimination based on sex, encompasses sexual orientation and gender identity in the context of employment.

State law prohibits a health carrier offering a non-grandfathered health plan in the individual or small group market from discriminating against individuals because of age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions. Such a health carrier may not, with respect to the health plan, discriminate on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation. Further, health plans and state Medicaid services may not discriminate on the basis of gender identity or expression, or perceived gender identity or expression, in the provision of non-reproductive health care services.

Summary of Bill: For health plans issued on or after January 1, 2022:

- it is an unfair practice to issue an adverse benefit determination for gender affirming treatment when that care is prescribed to an individual because of, related to, or consistent with a protected gender identity characteristic and is medically necessary;
- it is an unfair practice to apply categorical cosmetic or blanket exclusions to gender affirming treatment;
- facial feminization surgeries and facial gender affirming treatment, such as tracheal shaves, hair electrolysis, and other care such as mastectomies, breast reductions, and breast implants, or any combination of gender affirming procedures, when prescribed as gender affirming treatment and are medically necessary, shall not be excluded as cosmetic;
- health carriers must ensure health care providers who have experience prescribing or delivering gender affirming treatment conduct utilization reviews for any claim for gender affirming treatment; and
- if a health carrier does not have an adequate network for gender affirming treatment, the carrier must ensure timely and accessible delivery of care at no greater expense to the enrollee had the care been provided by an in-network provider.

Gender affirming treatment means a service or product a health care provider prescribes to

an individual to address the specific needs of that patient, to alleviate suffering, and address a condition, or both, related to an individual's protected gender identity characteristics and allows the individual to acquire primary or secondary sex characteristics, or both, more aligned with an individual's gender identity.

The Insurance Commissioner and the Human Rights Commission have concurrent jurisdiction to address violations of this act.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Gender affirming care improves outcomes for the trans community. Access to care reduces suicide and depression rates. Categorizing needed procedures as cosmetic forces people to seek care on the black market or outside the country. This bill can reduce care disparities within the trans community. Loopholes remain in the law that allows carriers to deny needed coverage. Gender affirming care is lifesaving care and improves mental health. Clearly defining what gender affirming care means provides a clear path to relief.

OTHER: Carriers are unclear if the bill is an expansion required coverage but will work with the sponsor to address that concern.

Persons Testifying: PRO: Senator Marko Lias, Prime Sponsor; Kevin Wang, Swedish Family Medicine - First Hill; Ari Robbins; Lain Littlejohn; Tweetie Fatuesi, UTOPIA; Tepatasi Vaina, UTOPIA; Ander Lyon; Davia Loren, M.D.; Mattie Mooney, Ingersoll Gender Center, Trans Women of Color Solidarity Network; Dana Savage, QLaw; Andre Wilson, M.S.; Ara-Lei Yandall, UTOPIA; Venus Aoki, Gender Justice League; Emily Facci; Lannette Sargent; Mandy Weeks-Green, Office of the Insurance Commissioner; Yasmin Trudeau, Washington State Office of the Attorney General.

OTHER: Chris Bandoli, Association of Washington Healthcare Plans.

Persons Signed In To Testify But Not Testifying: No one.