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**HOUSE BILL 1214**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Representative Walsh

AN ACT Relating to enacting the protecting children's bodies act; amending RCW 48.43.0128 and 74.09.675; adding a new section to chapter 43.70 RCW; creating a new section; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  A new section is added to chapter 43.70 RCW to read as follows:

(1) A health care provider may not provide gender transition procedures to any individual who is under 18 years of age. A health care provider may not refer any individual who is under 18 years of age to any health care provider for gender transition procedures. A health care provider is not prohibited from providing any of the following procedures that are not gender transition procedures to an individual who is under 18 years of age:

(a) Services to persons born with a medically verifiable disorder of sex development, including a person with external biological sex characteristics that are irresolvably ambiguous, such as being born with 46 xx chromosomes with virilization or 46 xy chromosomes with undervirilization or having both ovarian and testicular tissue;

(b) Services provided when a physician has otherwise diagnosed a disorder of sexual development and has determined through genetic or biochemical testing that the person does not have normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action;

(c) The treatment of any infection, injury, disease, or disorder that has been caused by or exacerbated by the performance of gender transition procedures, whether or not the gender transition procedure was performed in accordance with state and federal law or whether or not funding for the gender transition procedure is allowable under this section; and

(d) Any procedure undertaken because the individual suffers from a physical disorder, physical injury, or physical illness that would, as certified by a physician, place the individual in imminent danger of death or impairment of major bodily function unless surgery is performed.

(2) Public funds may not be directly or indirectly used, granted, paid, or distributed to any entity, organization, or individual that provides gender transition procedures to an individual who is under 18 years of age. Health care services furnished in the following situations may not include gender transition procedures to an individual who is under 18 years of age:

(a) By or in a health care facility owned by this state or a county or local government; and

(b) By a health care provider employed by the state or a county or local government.

(3) Any referral for or provision of gender transition procedures to an individual who is under 18 years of age is unprofessional conduct and is subject to discipline by the appropriate disciplining authority.

(4) A person may assert an actual or threatened violation of this section as a claim or defense in a judicial or administrative proceeding and obtain compensatory damages, injunctive relief, declaratory relief, or any other appropriate relief. A person must bring a claim for a violation of this section no later than two years after the day the cause of action accrues. An individual who is under 18 years of age may bring an action throughout the individual's minority through a parent or next friend and may bring an action in the individual's own name on reaching 18 years of age until 20 years after reaching 18 years of age.

(5) Notwithstanding any other law, an action under this section may be commenced, and relief may be granted, in a judicial proceeding without regard to whether the person commencing the action has sought or exhausted available administrative remedies. In any action or proceeding to enforce this section, a prevailing party who establishes a violation of this section shall recover reasonable attorney fees.

(6) The attorney general may bring an action to enforce compliance with this section. This section does not deny, impair, or otherwise affect any right or authority of the attorney general, this state, or any agency, officer, or employee of this state, acting under any law other than this section, to institute or intervene in any proceeding.

(7) A violation of this section is a class C felony.

(8) For the purposes of this section:

(a) "Biological sex" means the biological indication of male and female in the context of reproductive potential or capacity, such as sex chromosomes, naturally occurring sex hormones, gonads and nonambiguous internal and external genitalia present at birth, without regard to an individual's psychological, chosen, or subjective experience of gender.

(b) "Cross-sex hormones" means either of the following:

(i) Testosterone or other androgens given to biological females in amounts that are larger or more potent than would normally occur naturally in healthy biological sex females; or

(ii) Estrogen given to biological males in amounts that are larger or more potent than would normally occur naturally in healthy biological sex males.

(c) "Gender" means the psychological, behavioral, social, and cultural aspects of being male or female.

(d) "Gender reassignment surgery" means any medical or surgical service that seeks to surgically alter or remove healthy physical or anatomical characteristics or features that are typical for an individual's biological sex in order to instill or create physiological or anatomical characteristics that resemble a sex different from the individual's biological sex. "Gender reassignment surgery" includes genital or nongenital gender reassignment surgery performed for the purpose of assisting an individual with a gender transition.

(e) "Gender transition" means the process in which a person goes from identifying with and living as a gender that corresponds to the person's biological sex to identifying with and living as a gender different from the person's biological sex and may involve social, legal, or physical changes.

(f) "Gender transition procedures":

(i) Means any medical or surgical service, including physician services, inpatient and outpatient hospital services, or prescribed drugs related to gender transition, that seeks to either:

(A) Alter or remove physical or anatomical characteristics or features that are typical for the individual's biological sex; or

(B) Instill or create physiological or anatomical characteristics that resemble a sex different from the individual's biological sex, including medical services that provide puberty-blocking drugs, cross-sex hormones, or other mechanisms to promote the development of feminizing or masculinizing features in the opposite biological sex or genital or nongenital gender reassignment surgery performed for the purpose of assisting an individual with a gender transition.

(ii) Does not include any of the following:

(A) Services to persons born with a medically verifiable disorder of sex development, including a person with external biological sex characteristics that are irresolvably ambiguous, such as being born with 46 xx chromosomes with virilization or 46 xy chromosomes with undervirilization or having both ovarian and testicular tissue;

(B) Services provided when a physician has otherwise diagnosed a disorder of sexual development and has determined through genetic or biochemical testing that the person does not have normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action;

(C) The treatment of any infection, injury, disease, or disorder that has been caused by or exacerbated by the performance of gender transition procedures, whether or not the gender transition procedure was performed in accordance with state and federal law or whether or not funding for the gender transition procedure is allowable under this section; and

(D) Any procedure undertaken because the individual suffers from a physical disorder, physical injury, or physical illness that would, as certified by a physician, place the individual in imminent danger of death or impairment of major bodily function unless surgery is performed.

(g) "Genital gender reassignment surgery" means a medical procedure performed for the purpose of assisting an individual with a gender transition, including any of the following:

(i) Surgical procedures such as penectomy, orchiectomy, vaginoplasty, clitoroplasty, or vulvoplasty for biologically male patients or hysterectomy or ovariectomy for biologically female patients;

(ii) Reconstruction of the fixed part of the urethra with or without a metoidioplasty;

(iii) Phalloplasty, vaginectomy, scrotoplasty, or implantation of erection or testicular prostheses for biologically female patients; and

(iv) Removing any healthy or nondiseased body part.

(h) "Health care provider" means a person regulated under Title 18 RCW to practice health or health-related services or otherwise practicing health care services in this state consistent with state law.

(i) "Nongenital gender reassignment surgery" means medical procedures performed for the purpose of assisting an individual with a gender transition, including either of the following:

(i) Surgical procedures for biologically male patients, such as augmentation mammoplasty, facial feminization surgery, liposuction, lipofilling, voice surgery, thyroid cartilage reduction, gluteal augmentation, hair reconstruction, or various aesthetic procedures; and

(ii) Surgical procedures for biologically female patients, such as subcutaneous mastectomy, voice surgery, liposuction, lipofilling, pectoral implants, or various aesthetic procedures.

(j) "Puberty-blocking drugs" means gonadotropin-releasing hormone analogues or other synthetic drugs used in biological males to stop luteinizing hormone secretion and testosterone secretion, or synthetic drugs used in biological females which stop the production of estrogens and progesterone, when used to delay or suppress pubertal development in children for the purpose of assisting an individual with a gender transition.

(k) "Public funds" means state, county, or local government moneys, in addition to any department, agency, or instrumentality authorized or appropriated under state law or derived from any fund in which such moneys are deposited.

**Sec.**  RCW 48.43.0128 and 2021 c 280 s 3 are each amended to read as follows:

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

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

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

(2) Nothing in this section may be construed to prevent a carrier from appropriately utilizing reasonable medical management techniques.

(3) ((~~For~~)) Except as provided in subsection (9) of this section, for health plans issued or renewed on or after January 1, 2022:

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

(b) A health carrier may not apply categorical cosmetic or blanket exclusions to gender affirming treatment. When prescribed as medically necessary gender affirming treatment, a health carrier may not exclude as cosmetic services facial feminization surgeries and other facial gender affirming treatment, such as tracheal shaves, hair electrolysis, and other care such as mastectomies, breast reductions, breast implants, or any combination of gender affirming procedures, including revisions to prior treatment.

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

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

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

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

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

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

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

(9) A health carrier may not reimburse or provide coverage for gender affirming treatment to an individual who is under 18 years of age.

**Sec.**  RCW 74.09.675 and 2021 c 280 s 4 are each amended to read as follows:

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

(2) ((~~Beginning~~)) Except as provided in subsection (6) of this section, beginning January 1, 2022:

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

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

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

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

(3) For the purposes of this section, "gender affirming treatment" means a service or product that a health care provider, as defined in RCW 70.02.010, prescribes to an individual to support and affirm the individual's gender identity. Gender affirming treatment includes, but is not limited to, treatment for gender dysphoria. Gender affirming treatment can be prescribed to two spirit, transgender, nonbinary, and other gender diverse individuals.

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

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

(6) The authority and managed care plans administering services purchased or contracted for by the authority may not reimburse or provide coverage for gender affirming treatment to an individual who is under 18 years of age.

NEW SECTION. **Sec.**  This act may be known and cited as the protecting children's bodies act.

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