
SENATE BILL 5313

State of Washington

67th Legislature

2021 Regular Session

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

Read first time 01/20/21. Referred to Committee on Health & Long Term Care.

1 AN ACT Relating to health insurance discrimination; amending RCW
2 49.60.178 and 41.05.017; and reenacting and amending RCW 49.60.040
3 and 48.30.300.

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

5 **Sec. 1.** RCW 49.60.040 and 2020 c 85 s 1 are each reenacted and
6 amended to read as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) "Adverse benefit determination" means a denial, reduction, or
10 termination of a benefit, or a failure to provide or make payment, in
11 whole or in part, for a benefit, including a denial, reduction,
12 termination, or failure to provide or make payment that is based on a
13 determination of an enrollee's or applicant's eligibility to
14 participate in a plan, and including, with respect to group health
15 plans, a denial, reduction, or termination of a benefit, or a failure
16 to provide or make payment, in whole or in part, for a benefit
17 resulting from the application of any utilization review, as well as
18 a failure to cover an item or service for which benefits are
19 otherwise provided because it is determined to be experimental or
20 investigational or not medically necessary or appropriate.

1 (2) "Aggrieved person" means any person who: (a) Claims to have
2 been injured by an unfair practice in a real estate transaction; or
3 (b) believes that he or she will be injured by an unfair practice in
4 a real estate transaction that is about to occur.

5 ~~((2))~~ (3) "Any place of public resort, accommodation,
6 assemblage, or amusement" includes, but is not limited to, any place,
7 licensed or unlicensed, kept for gain, hire, or reward, or where
8 charges are made for admission, service, occupancy, or use of any
9 property or facilities, whether conducted for the entertainment,
10 housing, or lodging of transient guests, or for the benefit, use, or
11 accommodation of those seeking health, recreation, or rest, or for
12 the burial or other disposition of human remains, or for the sale of
13 goods, merchandise, services, or personal property, or for the
14 rendering of personal services, or for public conveyance or
15 transportation on land, water, or in the air, including the stations
16 and terminals thereof and the garaging of vehicles, or where food or
17 beverages of any kind are sold for consumption on the premises, or
18 where public amusement, entertainment, sports, or recreation of any
19 kind is offered with or without charge, or where medical service or
20 care is made available, or where the public gathers, congregates, or
21 assembles for amusement, recreation, or public purposes, or public
22 halls, public elevators, and public washrooms of buildings and
23 structures occupied by two or more tenants, or by the owner and one
24 or more tenants, or any public library or educational institution, or
25 schools of special instruction, or nursery schools, or day care
26 centers or children's camps: PROVIDED, That nothing contained in this
27 definition shall be construed to include or apply to any institute,
28 bona fide club, or place of accommodation, which is by its nature
29 distinctly private, including fraternal organizations, though where
30 public use is permitted that use shall be covered by this chapter;
31 nor shall anything contained in this definition apply to any
32 educational facility, columbarium, crematory, mausoleum, or cemetery
33 operated or maintained by a bona fide religious or sectarian
34 institution.

35 ~~((3))~~ (4) "Commission" means the Washington state human rights
36 commission.

37 ~~((4))~~ (5) "Complainant" means the person who files a complaint
38 in a real estate transaction.

39 ~~((5))~~ (6) "Covered multifamily dwelling" means: (a) Buildings
40 consisting of four or more dwelling units if such buildings have one

1 or more elevators; and (b) ground floor dwelling units in other
2 buildings consisting of four or more dwelling units.

3 ((+6)) (7) "Credit transaction" includes any open or closed end
4 credit transaction, whether in the nature of a loan, retail
5 installment transaction, credit card issue or charge, or otherwise,
6 and whether for personal or for business purposes, in which a
7 service, finance, or interest charge is imposed, or which provides
8 for repayment in scheduled payments, when such credit is extended in
9 the regular course of any trade or commerce, including but not
10 limited to transactions by banks, savings and loan associations or
11 other financial lending institutions of whatever nature, stock
12 brokers, or by a merchant or mercantile establishment which as part
13 of its ordinary business permits or provides that payment for
14 purchases of property or service therefrom may be deferred.

15 ((+7)) (8)(a) "Disability" means the presence of a sensory,
16 mental, or physical impairment that:

- 17 (i) Is medically cognizable or diagnosable; or
- 18 (ii) Exists as a record or history; or
- 19 (iii) Is perceived to exist whether or not it exists in fact.

20 (b) A disability exists whether it is temporary or permanent,
21 common or uncommon, mitigated or unmitigated, or whether or not it
22 limits the ability to work generally or work at a particular job or
23 whether or not it limits any other activity within the scope of this
24 chapter.

25 (c) For purposes of this definition, "impairment" includes, but
26 is not limited to:

27 (i) Any physiological disorder, or condition, cosmetic
28 disfigurement, or anatomical loss affecting one or more of the
29 following body systems: Neurological, musculoskeletal, special sense
30 organs, respiratory, including speech organs, cardiovascular,
31 reproductive, digestive, (~~genitor-urinary~~—[genitourinary])
32 genitourinary, hemic and lymphatic, skin, and endocrine; or

33 (ii) Any mental, developmental, traumatic, or psychological
34 disorder, including but not limited to cognitive limitation, organic
35 brain syndrome, emotional or mental illness, and specific learning
36 disabilities.

37 (d) Only for the purposes of qualifying for reasonable
38 accommodation in employment, an impairment must be known or shown
39 through an interactive process to exist in fact and:

1 (i) The impairment must have a substantially limiting effect upon
2 the individual's ability to perform his or her job, the individual's
3 ability to apply or be considered for a job, or the individual's
4 access to equal benefits, privileges, or terms or conditions of
5 employment; or

6 (ii) The employee must have put the employer on notice of the
7 existence of an impairment, and medical documentation must establish
8 a reasonable likelihood that engaging in job functions without an
9 accommodation would aggravate the impairment to the extent that it
10 would create a substantially limiting effect.

11 (e) For purposes of (d) of this subsection, a limitation is not
12 substantial if it has only a trivial effect.

13 ~~((8))~~ (9) "Dog guide" means a dog that is trained for the
14 purpose of guiding blind persons or a dog that is trained for the
15 purpose of assisting hearing impaired persons.

16 ~~((9))~~ (10) "Dwelling" means any building, structure, or portion
17 thereof that is occupied as, or designed or intended for occupancy
18 as, a residence by one or more families, and any vacant land that is
19 offered for sale or lease for the construction or location thereon of
20 any such building, structure, or portion thereof.

21 ~~((10))~~ (11) "Employee" does not include any individual employed
22 by his or her parents, spouse, or child, or in the domestic service
23 of any person.

24 ~~((11))~~ (12) "Employer" includes any person acting in the
25 interest of an employer, directly or indirectly, who employs eight or
26 more persons, and does not include any religious or sectarian
27 organization not organized for private profit.

28 ~~((12))~~ (13) "Employment agency" includes any person undertaking
29 with or without compensation to recruit, procure, refer, or place
30 employees for an employer.

31 ~~((13))~~ (14) "Families with children status" means one or more
32 individuals who have not attained the age of eighteen years being
33 domiciled with a parent or another person having legal custody of
34 such individual or individuals, or with the designee of such parent
35 or other person having such legal custody, with the written
36 permission of such parent or other person. Families with children
37 status also applies to any person who is pregnant or is in the
38 process of securing legal custody of any individual who has not
39 attained the age of eighteen years.

1 ~~((14))~~ (15) "Full enjoyment of" includes the right to purchase
2 any service, commodity, or article of personal property offered or
3 sold on, or by, any establishment to the public, and the admission of
4 any person to accommodations, advantages, facilities, or privileges
5 of any place of public resort, accommodation, assemblage, or
6 amusement, without acts directly or indirectly causing persons of any
7 particular race, creed, color, sex, sexual orientation, national
8 origin, or with any sensory, mental, or physical disability, or the
9 use of a trained dog guide or service animal by a person with a
10 disability, to be treated as not welcome, accepted, desired, or
11 solicited.

12 ~~((15))~~ (16) "Gender affirming treatment" means a service or
13 product that a health care provider, as defined in RCW 70.02.010,
14 prescribes to an individual to address the specific needs of that
15 patient, to alleviate suffering, and/or address a condition, related
16 to an individual's protected gender identity characteristics and/or
17 allows the individual to acquire primary and/or secondary sex
18 characteristics more aligned with an individual's gender identity.
19 Gender affirming treatment includes, but is not limited to, treatment
20 for gender dysphoria. Gender affirming treatment can be prescribed to
21 two spirit, transgender, nonbinary, and other gender diverse
22 individuals.

23 (17) "Health carrier" has the same meaning as in RCW 48.43.005
24 and, for the purpose of this chapter only, includes health plans
25 offered under chapter 41.05 RCW.

26 (18) "Honorably discharged veteran or military status" means a
27 person who is:

28 (a) A veteran, as defined in RCW 41.04.007; or

29 (b) An active or reserve member in any branch of the armed forces
30 of the United States, including the national guard, coast guard, and
31 armed forces reserves.

32 ~~((16))~~ (19) "Labor organization" includes any organization
33 which exists for the purpose, in whole or in part, of dealing with
34 employers concerning grievances or terms or conditions of employment,
35 or for other mutual aid or protection in connection with employment.

36 ~~((17))~~ (20) "Marital status" means the legal status of being
37 married, single, separated, divorced, or widowed.

38 ~~((18))~~ (21) "National origin" includes "ancestry."

39 ~~((19))~~ (22) "Person" includes one or more individuals,
40 partnerships, associations, organizations, corporations,

1 cooperatives, legal representatives, trustees and receivers, or any
2 group of persons; it includes any owner, lessee, proprietor, manager,
3 agent, or employee, whether one or more natural persons; and further
4 includes any political or civil subdivisions of the state and any
5 agency or instrumentality of the state or of any political or civil
6 subdivision thereof.

7 ~~((20))~~ (23) "Premises" means the interior or exterior spaces,
8 parts, components, or elements of a building, including individual
9 dwelling units and the public and common use areas of a building.

10 ~~((21))~~ (24) "Race" is inclusive of traits historically
11 associated or perceived to be associated with race including, but not
12 limited to, hair texture and protective hairstyles. For purposes of
13 this subsection, "protective hairstyles" includes, but is not limited
14 to, such hairstyles as afros, braids, locks, and twists.

15 ~~((22))~~ (25) "Real estate transaction" includes the sale,
16 appraisal, brokering, exchange, purchase, rental, or lease of real
17 property, transacting or applying for a real estate loan, or the
18 provision of brokerage services.

19 ~~((23))~~ (26) "Real property" includes buildings, structures,
20 dwellings, real estate, lands, tenements, leaseholds, interests in
21 real estate cooperatives, condominiums, and hereditaments, corporeal
22 and incorporeal, or any interest therein.

23 ~~((24))~~ (27) "Respondent" means any person accused in a
24 complaint or amended complaint of an unfair practice in a real estate
25 transaction.

26 ~~((25))~~ (28) "Service animal" means any dog or miniature horse,
27 as discussed in RCW 49.60.214, that is individually trained to do
28 work or perform tasks for the benefit of an individual with a
29 disability, including a physical, sensory, psychiatric, intellectual,
30 or other mental disability. The work or tasks performed by the
31 service animal must be directly related to the individual's
32 disability. Examples of work or tasks include, but are not limited
33 to, assisting individuals who are blind or have low vision with
34 navigation and other tasks, alerting individuals who are deaf or hard
35 of hearing to the presence of people or sounds, providing nonviolent
36 protection or rescue work, pulling a wheelchair, assisting an
37 individual during a seizure, alerting individuals to the presence of
38 allergens, retrieving items such as medicine or the telephone,
39 providing physical support and assistance with balance and stability
40 to individuals with mobility disabilities, and helping persons with

1 psychiatric and neurological disabilities by preventing or
2 interrupting impulsive or destructive behaviors. The crime deterrent
3 effects of an animal's presence and the provision of emotional
4 support, well-being, comfort, or companionship do not constitute work
5 or tasks. This subsection does not apply to RCW 49.60.222 through
6 49.60.227 with respect to housing accommodations or real estate
7 transactions.

8 ~~((26))~~ (29) "Sex" means gender.

9 ~~((27))~~ (30) "Sexual orientation" means heterosexuality,
10 homosexuality, bisexuality, and gender expression or identity. As
11 used in this definition, "gender expression or identity" means having
12 or being perceived as having a gender identity, self-image,
13 appearance, behavior, or expression, whether or not that gender
14 identity, self-image, appearance, behavior, or expression is
15 different from that traditionally associated with the sex assigned to
16 that person at birth.

17 **Sec. 2.** RCW 49.60.178 and 2020 c 52 s 9 are each amended to read
18 as follows:

19 (1) It is an unfair practice for any person whether acting for
20 himself, herself, or another in connection with an insurance
21 transaction or transaction with a health maintenance organization to
22 cancel or fail or refuse to issue or renew insurance or a health
23 maintenance agreement to any person because of sex, marital status,
24 sexual orientation, race, creed, color, national origin, citizenship
25 or immigration status, or the presence of any sensory, mental, or
26 physical disability or the use of a trained dog guide or service
27 animal by a person with disabilities: PROVIDED, That a practice which
28 is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not
29 constitute an unfair practice for the purposes of this section. For
30 the purposes of this section, "insurance transaction" is defined in
31 RCW 48.01.060, health maintenance agreement is defined in RCW
32 48.46.020, and "health maintenance organization" is defined in RCW
33 48.46.020.

34 (2) For a health carrier offering a health plan issued or renewed
35 on or after January 1, 2022:

36 (a) It is an unfair practice to issue an adverse benefit
37 determination for gender affirming treatment when that care is
38 prescribed to an individual because of, related to, or consistent

1 with a protected gender identity characteristic under RCW 49.60.040
2 and is medically necessary.

3 (b) It is unfair practice to apply categorical cosmetic or
4 blanket exclusions to gender affirming treatment.

5 (c) Facial feminization surgeries and facial gender affirming
6 treatment, such as tracheal shaves, hair electrolysis, and other care
7 such as mastectomies, breast reductions, and breast implants, or any
8 combination of gender affirming procedures, when prescribed as gender
9 affirming treatment and are medically necessary, shall not be
10 excluded as cosmetic.

11 (d) Health carriers must ensure that health care providers who
12 have experience prescribing or delivering gender affirming treatment
13 conduct the utilization reviews pursuant to RCW 48.43.005(45) for any
14 claim for gender affirming treatment.

15 (e) If the health carrier does not have an adequate network for
16 gender affirming treatment, the health carrier shall ensure the
17 delivery of timely and geographically accessible medically necessary
18 gender affirming treatment at no greater expense than if the health
19 carrier had an in-network, geographically accessible provider
20 available. This includes, but is not limited to, providing case
21 management services to secure out-of-network gender affirming
22 treatment options that are available to the enrollee in a timely
23 manner within their geographic region. The enrollee shall pay no more
24 than the same cost sharing that the enrollee would pay for the same
25 covered services received from an in-network provider.

26 (3) Subsections (1) and (2) of this section apply to health plans
27 under chapter 74.09 RCW and all employee benefit plans pursuant to
28 RCW 41.05.075.

29 (4) The fact that such unfair practice may also be a violation of
30 chapter 48.30, 48.44, or 48.46 RCW does not constitute a defense to
31 an action brought under this section.

32 (5) The insurance commissioner, under RCW 48.30.300, and the
33 human rights commission, under chapter 49.60 RCW, shall have
34 concurrent jurisdiction under this section and shall enter into a
35 working agreement as to procedure to be followed in complaints under
36 this section.

37 (6) The insurance commissioner may adopt rules necessary for the
38 implementation of this section.

1 **Sec. 3.** RCW 41.05.017 and 2019 c 427 s 21 are each amended to
2 read as follows:

3 Each health plan that provides medical insurance offered under
4 this chapter, including plans created by insuring entities, plans not
5 subject to the provisions of Title 48 RCW, and plans created under
6 RCW 41.05.140, are subject to the provisions of RCW 48.43.500,
7 70.02.045, 48.43.505 through 48.43.535, 48.43.537, 48.43.545,
8 48.43.550, 70.02.110, 70.02.900, 48.43.190, 48.43.083, 48.30.300, and
9 chapter 48.49 RCW.

10 **Sec. 4.** RCW 48.30.300 and 2020 c 274 s 32 and 2020 c 228 s 8 are
11 each reenacted and amended to read as follows:

12 Notwithstanding any provision contained in (~~Title 48 RCW~~) this
13 title to the contrary:

14 (1) A person or entity engaged in the business of insurance in
15 this state may not refuse to issue any contract of insurance or
16 cancel or decline to renew such contract because of the sex, marital
17 status, or sexual orientation as defined in RCW 49.60.040, or the
18 presence of any disability of the insured or prospective insured. The
19 amount of benefits payable, or any term, rate, condition, or type of
20 coverage may not be restricted, modified, excluded, increased, or
21 reduced on the basis of the sex, marital status, or sexual
22 orientation, or be restricted, modified, excluded, or reduced on the
23 basis of the presence of any disability of the insured or prospective
24 insured.

25 (2) It is an unfair practice to issue an adverse benefit
26 determination for gender affirming treatment when that care is
27 prescribed to an individual because of, related to, or consistent
28 with a protected gender identity characteristic under RCW 49.60.040
29 and is medically necessary.

30 (3) It is an unfair practice to apply categorical cosmetic or
31 blanket exclusions to gender affirming treatment.

32 (4) Facial feminization surgeries and facial gender affirming
33 treatment, such as tracheal shaves, hair electrolysis, and other care
34 such as mastectomies, breast reductions, and breast implants, or any
35 combination of gender affirming procedures, when prescribed as gender
36 affirming treatment and are medically necessary, shall not be
37 excluded as cosmetic.

38 (5) Health carriers must ensure that health care providers who
39 have experience prescribing or delivering gender affirming treatment

1 conduct the utilization reviews pursuant to RCW 48.43.005(45) for any
2 claim for gender affirming treatment.

3 (6) If the health carrier does not have an adequate network for
4 gender affirming treatment, the health carrier shall ensure the
5 delivery of timely and geographically accessible medically necessary
6 gender affirming treatment at no greater expense than if the health
7 carrier had an in-network, geographically accessible provider
8 available. This includes, but is not limited to, providing case
9 management services to secure out-of-network gender affirming
10 treatment options that are available to the enrollee in a timely
11 manner within their geographic region. The enrollee shall pay no more
12 than the same cost sharing that the enrollee would pay for the same
13 covered services received from an in-network provider.

14 (7) Subsections (1) through (6) of this section apply to health
15 plans under chapter 74.09 RCW and all employee benefit plans pursuant
16 to RCW 41.05.075.

17 (8) Except as provided in RCW 48.43.0128, 48.44.220, or
18 48.46.370, this subsection does not prohibit fair discrimination on
19 the basis of sex, or marital status, or the presence of any
20 disability when bona fide statistical differences in risk or exposure
21 have been substantiated.

22 (9) For the purposes of this section, "gender affirming
23 treatment" means a service or product that a health care provider, as
24 defined in RCW 70.02.010, prescribes to an individual to address the
25 specific needs of that patient, to alleviate suffering, and/or
26 address a condition, related to an individual's protected gender
27 identity characteristics and/or allows the individual to acquire
28 primary and/or secondary sex characteristics more aligned with an
29 individual's gender identity. Gender affirming treatment includes,
30 but is not limited to, treatment for gender dysphoria. Gender
31 affirming treatment can be prescribed to two spirit, transgender,
32 nonbinary, and other gender diverse individuals.

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