

STAND. COM. REP. NO. 3342

Honolulu, Hawaii

MAR 23 2022

RE: H.B. No. 2405
H.D. 2
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2022
State of Hawaii

Sir:

Your Committee on Commerce and Consumer Protection, to which was referred H.B. No. 2405, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO INSURANCE,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Prohibit health insurers, mutual benefit societies, and health maintenance organizations from applying categorical cosmetic or blanket exclusions to gender affirming treatments;
- (2) Prohibit those same entities from excluding gender affirming treatments as cosmetic services when prescribed as medically necessary; and
- (3) Require those same entities to provide applicants and insured persons with clear information about the coverage of gender transition services, including the process for appealing a claim denied on the basis of medical necessity.

Your Committee received testimony in support of this measure from the Department of Health, Hawai'i Civil Rights Commission, Hawai'i Health & Harm Reduction Center, Stonewall Caucus of the



Democratic Party of Hawai'i, Planned Parenthood Alliance Advocates, North Shore Ko'olau Diversity Collective, Democratic Party of Hawai'i, Hawai'i Public Health Institute, AF3IRM Hawai'i, Rainbow Family 808, and twenty-two individuals. Your Committee received comments on this measure from the Department of Commerce and Consumer Affairs, Hawai'i Employer-Union Health Benefits Trust Fund Board of Trustees, Hawai'i Medical Service Association, Kaiser Permanente Hawai'i, and Hawai'i Association of Health Plans.

Your Committee finds that existing law prohibits the denial, exclusion, or limitation of health care services or treatment based on a person's actual gender identity or perceived gender identity. Nevertheless, members of the transgender community have continued to experience medical coverage denial for certain gender affirming treatments on the basis that they are cosmetic, rather than medically necessary. There is growing consensus among major medical organizations that health care services relating to gender transition are medically necessary to alleviate gender dysphoria. Accordingly, this measure will prohibit insurers from applying blanket exclusions to gender affirming treatments as cosmetic services when prescribed as medically necessary.

Your Committee has amended this measure by:

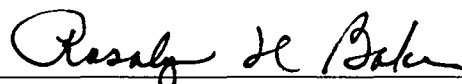
- (1) Clarifying that the anti-discrimination protections of this measure shall extend to a transgender person or a person's transgender family member;
- (2) Specifying that the medical necessity of any treatment shall be determined in accordance with the most recent edition of the Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People, issued by the World Professional Association for Transgender Health;
- (3) Clarifying that no treatment or service shall be denied on the basis that it is cosmetic or not medically necessary unless a health care provider with experience in prescribing or delivering gender affirming treatment first reviews and confirms the appropriateness of the adverse benefit determination;



- (4) Clarifying that a health insurer, mutual benefit society, or health maintenance organization shall not apply categorical cosmetic or blanket exclusions to gender affirming treatments or procedures, or any combination of services or procedures or revisions to prior treatments, when prescribed as medically necessary, and setting forth a non-exhaustive list of such procedures; provided that the policy, contract, plan, or agreement also provides coverage for those services when the services are offered for purposes other than gender transition;
- (5) Reverting the definitions of "actual gender identity" and "perceived gender identity" to the existing statutory language;
- (6) Amending section 432D-26.3, Hawaii Revised Statutes, to extend this measure directly to health maintenance organizations;
- (7) Inserting an effective date of November 20, 2022, to reflect Transgender Day of Remembrance; and
- (8) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2405, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2405, H.D. 2, S.D. 1, and be referred to your Committees on Judiciary and Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Commerce and
Consumer Protection,



ROSALYN H. BAKER, Chair



