



STATE OF HAWAII
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
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Toll Free 1(800) 295-0089
www.eutf.hawaii.gov

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WRITTEN ONLY

TESTIMONY BY DEREK MIZUNO
ADMINISTRATOR, HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES & HOMELESSNESS
ON HOUSE BILL NO. 2405

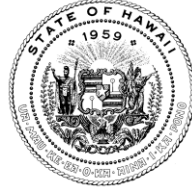
February 10, 2022
9:00 a.m.
Videoconference (Conference Room 329)

RELATING TO INSURANCE

Chair Yamane, Vice Chair Tam, and Members of the Committee:

The Hawaii Employer-Union Health Benefits Trust Fund (EUTF) Board of Trustees has not had a chance to take a position on this bill. Their next meeting is February 15, 2022. EUTF staff would like to inform the Committee that passage of this bill is estimated to increase costs to the EUTF health plans by approximately \$1.5 million annually. We are still working on an estimate of the impact on the State's unfunded liability.

Thank you for the opportunity to testify.



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310
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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Health, Human Services, and Homelessness
Tuesday, February 15, 2022
9:00 a.m.
Via Videoconference**

**On the following measure:
H.B. 2405, RELATING TO INSURANCE**

Chair Yamane and Members of the Committee:

My name is Colin M. Hayashida, and I am the Insurance Commissioner of the Department of Commerce and Consumer Affairs' (Department) Insurance Division. The Department offers comments on this bill.

The purposes of this bill are to: (1) prohibit health insurance companies from denying coverage on the basis of gender identity if the policy covers the treatment for purposes other than gender transition; and (2) require insurance companies 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.

Section 2, page 2, lines 12 – 13, and Section 3, page 7, lines 13 - 14 of the bill amend two similar non-discrimination sections regulating insurers and Mutual Benefit Societies (MBS). Amending HRS §§ 431:10A-118.3 and 432:1-607.3 to reference health maintenance organizations (HMO), rather than amending the equivalent non-discrimination section applicable to HMOs in HRS § 432D-26.3, would result in three

separate, inconsistent non-discrimination sections applying to HMOs and will likely cause confusion.

In addition, the Department concurs with requiring insurers to provide applicants and insureds with clear information about the coverage of gender transition services, including the process for appealing a claim denied on the basis of medical necessity.

However, language in Section 2, page 4, lines 13-14 and Section 3, page 9, lines 15-16, that “[a]ll health care services related to gender transition treatments shall be considered medically necessary[.]” read in conjunction with the amendments in this bill, may be construed to circumvent the analysis of medical necessity, which is defined in HRS § 432E-1.4. Further, it is unclear whether these amendments would be construed as “in addition to the essential health benefits” within the meaning of 45 Code of Federal Regulations (CFR) § 155.170(a) or subject to defrayment provisions under 45 CFR § 155.170(b), which apply to benefits “in addition to the essential health benefits.”

For the Committee’s information, Hawaii Revised Statutes § 23-51 provides, in part, that “[b]efore any legislative measure that mandates health insurance coverage for specific health services, specific diseases, or certain providers of health care services as part of individual or group health insurance policies, [sic] can be considered, there shall be concurrent resolutions passed requesting the auditor to prepare and submit to the legislature a report[.]”

Thank you for the opportunity to testify.

HB-2405

Submitted on: 2/10/2022 4:52:06 PM

Testimony for HHH on 2/15/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Peter Tuiolosega Silva	Kumukahi Health + Wellness	Support	No

Comments:

Dear Chair Yamane, Vice-Chair Tam, and Honorable Members,

My name is Peter Silva and I am the Executive Director of Kumukahi Health + Wellness, a non-profit on Hawai'i Island. We strongly support HB2405 which updates the language on the transgender anti-discrimination health insurance law and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary and should be fully covered by patients' insurance. Without insurance coverage of these medically necessary procedures (that are provided for the cisgender people), trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) that ignore the law and medical necessity of gender-affirming care by passing this bill.

When insurance companies categorically deny certain gender-affirming procedures by saying they are cosmetic in their policies, insurers attempt to take themselves out of HRS §432E-1.4(a) (Medical Necessity Statute). The Medical Necessity Statute requires coverage of a procedure if (1) it is not specifically excluded (2) is recommended by a licensed healthcare provider and (3) is medically necessary. Because (1) the anti-discrimination law prohibits insurance companies from categorically excluding surgeries like facial feminization and breast augmentation for transgender people (a protected gender identity) in their policies, (2) licensed doctors are recommending these procedures, and (3) gender-affirming procedures (even those that HMSA and Kaiser have categorically) are supported by the majority of medical opinion, insurance companies are subject to the controlling definition of medical necessity in the HRS 432E.

Our transgender community members deserve healthcare that meets their needs, just like all members of our community. Thank you for investing in the health and safety of our māhū and trans community members!

Sincerely,

Peter T. Silva

Executive Director

February 11, 2022

The Honorable Ryan I. Yamane, *Chair*
The Honorable Adrian K. Tam, *Vice Chair*
Health Committee on Health, Human Services, & Homelessness
415 South Beretania St.
Honolulu, HI 96813

RE: **Support of House Bill 2405**

Dear Chair Yamane and Vice Chair Tam:

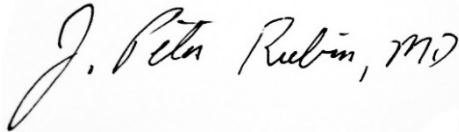
On behalf of the Northwest Society of Plastic Surgeons (NWSPS) and the American Society of Plastic Surgeons (ASPS), we are writing **in support of** House Bill 2405. ASPS is the largest association of plastic surgeons in the world, and in conjunction with NWSPS, represents more than 8,000 members and 93 percent of all board-certified plastic surgeons in the United States – including 38 board-certified plastic surgeons in Hawaii. Our mission is to advance quality care for plastic surgery patients, including those patients experiencing gender dysphoria, a condition in which a person experiences severe distress due to a disconnect between how they feel and their anatomic characteristics.

As surgeons who provide care for transgender individuals, our members know firsthand the effects of gender dysphoria. Individuals with gender dysphoria often describe being born in the wrong body, and plastic surgery is an important step in aligning their bodies with whom they know themselves to be. Care of individuals with gender dysphoria requires a multidisciplinary approach that may include mental health professionals, primary care physicians, endocrinologists, and plastic surgeons. ASPS strongly supports H.B. 2405 and the clear effort to improve the delivery of transgender services in Hawaii by ensuring all related medically necessary services are covered by insurers and guaranteeing that transgender individuals cannot be discriminated against by health insurers.

We would like to applaud Hawaii for recognizing that gender affirming surgeries are an important part of transgender patients' overall transition-related care that help them better identify with their gendered self, which in turn enhances their psychological well-being and overall health. It is our firm belief that by working together, health care teams and insurers – both private and public – can help meet the World Professional Association for Transgender Health's high standards to enhance health, happiness, and contentment. H.B. 2405 is a critical step in the right direction of achieving that goal and ensuring transgender individuals can obtain comprehensive and quality health care.

For these reasons outlined above, we support H.B. 2405 and the protection they ensure for the transgender community in Hawaii. Thank you for your consideration of ASPS's comments. Please do not hesitate to contact Patrick Hermes, Director of Advocacy and Government Relations, at phermes@plasticsurgery.org or (847) 228-3331 with any questions or concerns.

Sincerely,

Handwritten signature of J. Peter Rubin, MD in black ink on a light background.

J. Peter Rubin, MD, MBA, FACS
President, American Society of Plastic Surgeons

Handwritten signature of Nicholas Carr, MD in black ink.

Nicholas Carr, MD, FRCSC
President, Northwest Society of Plastic Surgeons

cc: Members, Health Committee on Health, Human Services, & Homelessness



TESTIMONY IN SUPPORT OF HB 2405

TO: Chair Yamane, Vice-Chair Tam, & Members – House Committee on Health,
Human Services & Homelessness

FROM: Maddalynn Seseapasara
Kua'ana Project Manager

DATE: February 15, 2022 at 9:00 AM

Hawai'i Health & Harm Reduction Center (HHRC) **supports** SB 2835. This bill requires insurance providers to post their gender identity policies and clarifies the language of Act 135 (2016), which states that insurance agencies cannot discriminate based on gender identity. Without the clarifications in this bill, insurance companies in Hawai'i will likely continue to categorically deny surgeries they claim are not medically necessary despite the reality of the science, law, and, most importantly, the lived experiences of māhū and trans people in Hawai'i.

HHRC's mission is to reduce harm, promote health, create wellness, and fight stigma in Hawai'i and the Pacific. We work with many individuals who are adversely impacted by poverty, housing instability, discrimination, healthcare inequity and other social determinants of health. HHRC operates the Kua'ana Project through which peers of the transgender community *kōkua* (*assist*) other transpersons using their own personal experiences. Whether it be to search for jobs, legally change their names, or access healthcare and stable housing, our Kua'ana Project staff are able to support and encourage māhū and trans people with compassion, understanding.

Because of our leadership in the local transgender community, we frequently hear from community members seeking gender affirming surgery and healthcare. Despite Act 135 from 2016, trans community members continue to be denied medically necessary and life-saving procedures. There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary and should be fully covered by patients' insurance. Without insurance coverage of these medically necessary procedures (that are provided for the cisgender people), trans lives are put at risk for depression and suicidal ideation.

We need your help in correcting this issue of gender-based discrimination. Thank you for the opportunity to testify in support of this bill.



Statement of the Democratic Party of Hawai'i Comments on HB2405, Relating to Insurance

The [Democratic Party of Hawai'i](#) supports HB2405, Relating to Insurance, to the extent that it aligns with our Party's [platform](#). The bill would prohibit health insurance companies from denying coverage on the basis of gender identity if the policy covers the treatment for purposes other than gender transition; and require insurance companies 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.

The Democratic Party of Hawai'i believes that healthcare is a right, not a privilege - one that extends to people of all genders regardless of their gender identity. Our platform notes that the high costs of insurance and insufficient coverage mean that many people do not have access to the care they need - particularly those from ethnic, sexual, or gender minority backgrounds. We further believe we must take steps to prohibit discrimination in healthcare based on gender.

We support this bill as it would clarify that insurance companies cannot categorically deny medically necessary surgeries and require them to post their policies. The bill would align Hawai'i's anti-discrimination insurance statute with the current medical majority understanding of trans-affirming care, which is important as Hawai'i has the highest trans population per capita of any state in the U.S.

Mahalo nui for the opportunity to provide these comments in support of this important bill.



Testimony of
John M. Kirimitsu
Legal & Government Relations Consultant

Before:
House Committee on Health, Human Services, & Homelessness
The Honorable Ryan I. Yamane, Chair
The Honorable Adrian K. Tam, Vice Chair

February 15, 2022
9:00 am
Via Videoconference

Re: HB 2405 Relating to Insurance

Chair, Vice Chair, and committee members, thank you for this opportunity to provide testimony on HB 2405 prohibiting insurance companies from denying coverage on the basis of gender identity.

Kaiser Permanente Hawaii supports the intent of this bill but requests an amendment.

Kaiser Permanente is a nationally recognized leader in LGBTQ health care equality, providing full spectrum medical, surgical and mental health care to our transgender patients and members. We are proud to offer gender-affirming services that ensure respectful, equitable, and inclusive care to all our transgender and gender diverse patients and members everywhere that we deliver care.

In the best interest of the patient, Kaiser Permanente requests an amendment to include the nationally accepted evidenced-based “medically necessary” standard, in accordance with HRS § 432E-1.4 (*Medical Necessity*), relating to the gender transition services listed in this bill. We recognize that transgender individuals have unique needs related to gender transitioning, specifically mental health, hormonal treatment, and appropriate referral for gender affirming surgery, which can create an unwanted dependency on the healthcare system. However, this evaluation of medical necessity is critical to allow the clinician to individualize each patient’s gender affirming medical needs and goals. As such, an individual may require none, some, or all the medical interventions described in this bill to effectively address their gender dysphoria and support them with achieving their gender affirming goals.

Thank you for the opportunity to comment.

711 Kapiolani Blvd
Honolulu, Hawaii 96813
Telephone: 808-432-5224
Facsimile: 808-432-5906
Mobile: 808-282-6642
E-mail: John.M.Kirimitsu@kp.org



February 10, 2022

The Honorable Ryan I. Yamane, Chair
The Honorable Adrian K. Tam, Vice Chair
House Committee on Health, Human Services, & Homelessness

Re: HB 2405 – Relating to Insurance

Dear Chair Yamane, Vice Chair Tam, and Committee Members:

Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 2405, which prohibits health insurance companies from denying coverage on the basis of gender identity if the policy covers the treatment for purposes other than gender transition. It also requires insurance companies 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.

As a supporter of the LGBTQ+ community HMSA offers gender transition benefits for many of our members. This policy covers gender identity and transition services based on medical necessity as defined by HRS 432E-1.4. HMSA is committed to providing clear information about our gender identity and transition services including our appeals process. However, we have concerns and **oppose** this measure as written.

This bill creates a conflict with the role of medical necessity as it is written in the Hawaii Revised Statutes. Medical necessity is a method placed in statute to allow for a clinical determination of whether a health intervention is appropriate considering potential harms and benefits to the patient; effectiveness in improving health outcomes; and cost-effectiveness for the medical condition being treated, compared to alternative health interventions, based on clinical and scientific evidence and data. The medical directors making such determinations are licensed specialists in their field who utilize clinical best practices and evidence based data from peer reviewed medical journals to make decisions for our members.

Should this measure move forward as written with a state mandate for health insurance to cover the listed procedures for gender dysphoria, we believe this measure would increase costs and raise premiums. For the additional procedures beyond the ones that HMSA currently covers, the initial estimates place the cost impact at \$7.7M in our commercial line of business and \$4.4M in our QUEST line of business. Included in this would be a potential cost impact to EUTF of \$1.5M.

Such a high cost would be subject to defrayment by the state as the procedures outlined in this measure go beyond Affordable Care Act essential health benefits per 45 CFR § 155.170(a) and 45 CFR § 155.170(b). Therefore, should this measure move forward we would like to respectfully request the State Auditor first conduct an impact assessment report pursuant to Section 23-51 and 23-52 of the Hawaii Revised Statutes.



Thank you for the opportunity to testify on this measure. Your consideration of our comments is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew W. Sasaki', is written in a cursive style.

Matthew W. Sasaki
Assistant Vice President
Government & External Relations

Aloha Chair Yamane, Vice-Chair Tam, and Honorable members,

My name is Jen, and I am writing in **strong support** of HB2405. This bill requires insurance providers to post their gender identity policies and clarifies the language of Act 135¹ (2016), which states that insurance agencies cannot discriminate based on gender identity. Without the clarifications in this bill, insurance companies in Hawai'i will likely continue to categorically deny surgeries they claim are not medically necessary despite the reality of the science, law, and, most importantly, the lived experiences of māhū and trans people in Hawai'i.

The trans-affirming procedures in HB2405 are almost always medically necessary.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary and should be fully covered by patients' insurance.² Without insurance coverage of these medically necessary procedures (that are provided for the cisgender people), trans lives are put at risk for depression and suicidal ideation.³ Also, trans

¹ H.B. 2084 HD2 SD1 (2016) *available at* https://www.capitol.hawaii.gov/Archives/measure_indiv_Archives.aspx?billtype=HB&billnumber=2084&year=2016.

² See American College of Obstetricians and Gynecologists, ACOG Releases Guidance on Health Care for Transgender and Gender Diverse Individuals (Feb. 18, 2021) *available at* <https://www.acog.org/news/news-releases/2021/02/acog-guidance-health-care-for-transgender-gender-diverse-individuals>; Kaiser Permanente Northwest, Transgender Procedures Medically Necessary Criteria at 183 (2021) *available at* <https://www.hca.wa.gov/sites/default/files/pebb/kaiser-preauthreqs.pdf>; The World Medical Association, WMA Statement on Transgender People, *available at* <https://www.wma.net/policies-post/wma-statement-on-transgender-people>; The American Medical Association, Issue Brief, *available at* <https://www.ama-assn.org/system/files/2019-03/transgender-coverage-issue-brief.pdf>; Wylie C Hembree & Peggy T Cohen-Ketten et al., J. of Clinical Endocrinology & Metabolism Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline (Sept. 13, 2017) *available at* https://academic.oup.com/jcem/article/102/11/3869/4157558?source=post_page-----; The Endocrine Society, Transgender Health, An Endocrine Society Position Statement (Dec. 15, 2020) *available at* <https://www.endocrine.org/advocacy/position-statements/transgender-health>; American Academy of Child & Adolescent Psychiatry, AACAP Statement Responding to Efforts to ban Evidence-Based Care for Transgender and Gender Diverse Youth (Nov. 8, 2018) *available at* https://www.aacap.org/AACAP/Latest_News/AACAP_Statement_Responding_to_Efforts_to_ban_Evidence-Based_Care_for_Transgender_and_Gender_Diverse.aspx, World Professional Association for Transgender Health (2011) *available at* https://e-space.mmu.ac.uk/625048/1/2011_WPATH_Standards_of_Care_V7-%202011.pdf; the American Public Health Association (Nov. 1, 2016) *available at* <https://apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2017/01/26/promoting-transgender-and-gender-minority-health-through-inclusive-policies-and-practices>; Barry Anton, Proceedings of the American Psychological Association For the Legislative Year 2009: Minutes of the Annual Meeting of the Council of Representatives and Minutes of the Meetings of the Board of Directors (2009) *available at* <https://psycnet.apa.org/record/2010-14198-008>.

³ Fenway Health, New Study Shows Transgender People Who Receive Gender-Affirming Surgery Are Significantly Less Likely To Experience Psychological Distress Or Suicidal Ideation, (April 28, 2021) *available at* <https://fenwayhealth.org/new-study-shows-transgender-people-who-receive-gender-affirming-surgery-are-significantly-less-likely-to-experience-psychological-distress-or-suicidal-ideation/>.

people often resort to underground economies to gain the funds needed for these life-saving surgeries, when insurance companies could, at the recommendation of a doctor, have easily covered the cost.⁴

To categorically deny insurance coverage for transgender affirming/confirming care is to deny insurance based on gender identity in violation of Act 135 and the Insurance Code.

Currently, doctors are telling the insurance companies that, in their medical opinion, they recommend their transgender (a gender identity) patients receive affirming surgery. In response, certain insurance companies deny coverage based on their own unsubstantiated “policy” despite overwhelming scientific evidence. Insurance providers in Hawai‘i deny medically necessary surgeries by claiming that “procedures such as breast augmentation, liposuction, Adam’s apple reduction, rhinoplasty, and facial reconstruction are usually considered cosmetic, and their impact on relieving gender dysphoria is unclear.”⁵ Because of these unfounded beliefs, these surgeries are denied, even though they are covered for cisgender patients, meaning almost no trans people (until we started advocating at the legislature in 2021) have been approved for coverage of these surgeries since 2017, when the anti-discrimination law (Act 135) came into effect.

These persistent and categorical denials in violation of Act 135 also violate Hawai‘i’s insurance code. HRS §431:2-203 (b)(1) states that a person who intentionally or knowingly violates, intentionally or knowingly permits any person over whom the person has authority to violate, or intentionally or knowingly aids any person **in violating any insurance rule or statute of this State or any effective order issued by the commissioner** shall be subject to any penalty or fine as provided by this code or by the Hawaii Penal Code.

Private insurance companies have unlawfully exempted themselves from the medical necessity statute related to gender identity services.

When insurance companies categorically deny specific gender-affirming procedures by saying they are cosmetic in their policies, insurers attempt to take themselves out of HRS §432E-1.4(a) (Medical Necessity Statute). The Medical Necessity Statute requires coverage of a procedure if (1) it is not specifically excluded, (2) it is recommended by a licensed healthcare provider, and (3) it is medically necessary. Because (1) the anti-discrimination law⁶ prohibits insurance companies from categorically excluding surgeries like facial feminization and breast

⁴ See Johns Hopkins University, Study: Covering transgender Health Care Would Be cost-effective for Insurance Companies (2015) *available at* <https://hub.jhu.edu/2015/12/03/transgender-health-insurance-cost-effective/>.

⁵ HMSA Policy Number: MM.06.026 *available at* <https://prc.hmsa.com/s/article/Gender-Identity-Services?r=43&ui-knowledge-components-aura-actions.KnowledgeArticleVersionCreateDraftFromOnlineAction.createDraftFromOnlineArticle=1> (Mar. 1, 2021); see also Kaiser Permanent Hawai‘i at 41 (2022) *available at* https://www.opm.gov/healthcare-insurance/healthcare/plan-information/plan-codes/2022/brochures/73-005.pdf?fbclid=IwAR38X63dr3ZhnmeFbZXhOz5HGQKLgXgQ8NGN-CtTd3T6ZcTkuWstLGF_oc.

⁶ See HRS §431:10A-118.3 & §432:1-607.3 (these sections include, *but are not limited to* surgeries that are provided to cisgender patients).

augmentation for transgender people (a protected gender identity) in their policies, (2) licensed doctors are recommending these procedures, and (3) gender-affirming procedures (even those that HMSA and Kaiser have categorically) are supported by the majority of medical opinion, insurance companies are subject to the controlling definition of medical necessity in the HRS 432E.

It is also worth noting that the HRS §432E-1.4 medical necessity definition of “cost-effective” is satisfied, which emphasizes “the benefits and harms relative to the costs represent an economically efficient use of resources for patients,” not lower dollar amounts. Because of the harmful mental and physical consequences if gender-affirming surgery is not granted. The costs of lives well lived or lost due to suicide for trans people far outweigh any perceived cost (of which there is none) of surgeries and procedures for trans people that are regularly and easily granted to cisgender patients.

Conclusion

Insurance companies in Hawai'i claim to support trans people during times like Pride, but they fail to provide true care when it's really needed. By passing this bill, insurance companies in Hawai'i will be required to remove policies categorically prohibiting surgeries, prioritizing doctors' recommendations over their current unsupported policies. Please **PASS** this clarification bill to ensure the insurance companies follow the law and post their policies because mähū and trans lives and well-being depend on it.

Mahalo,

Jen Jenkins

Attachments:

Medical Necessity Statute

Attorney General Letter, January 14, 2022

NCTE/TLC Letter to Insurance Commissioner April 27, 2021

Medical Necessity -

https://www.capitol.hawaii.gov/hrscurrent/Vol09_Ch0431-0435H/HRS0432E/HRS_0432E-001_0004.htm

§432E-1.4 Medical necessity. (a) **For contractual purposes, a health intervention shall be covered if it is an otherwise covered category of service, not specifically excluded, recommended by the treating licensed health care provider, and determined by the health plan's medical director to be medically necessary as defined in subsection (b).** A health intervention may be medically indicated and not qualify as a covered benefit or meet the definition of medical necessity. A managed care plan may choose to cover health interventions that do not meet the definition of medical necessity.

(b) A health intervention is medically necessary if it is recommended by the treating physician or treating licensed health care provider, is approved by the health plan's medical director or physician designee, and is:

(1) For the purpose of treating a medical condition;

(2) The most appropriate delivery or level of service, considering potential benefits and harms to the patient;

(3) Known to be effective in improving health outcomes; provided that:

(A) Effectiveness is determined first by scientific evidence;

(B) If no scientific evidence exists, then by professional standards of care; and

(C) If no professional standards of care exist or if they exist but are outdated or contradictory, then by expert opinion; and

(4) Cost-effective for the medical condition being treated compared to alternative health interventions, including no intervention. For purposes of this paragraph, cost-effective shall not necessarily mean the lowest price.

(c) When the treating licensed health care provider and the health plan's medical director or physician designee do not agree on whether a health intervention is medically necessary, a reviewing body, whether internal to the plan or external, shall

give consideration to, but shall not be bound by, the recommendations of the treating licensed health care provider and the health plan's medical director or physician designee.

(d) For the purposes of this section:

"Cost-effective" means a health intervention where the benefits and harms relative to the costs represent an economically efficient use of resources for patients with the medical condition being treated through the health intervention; provided that the characteristics of the individual patient shall be determinative when applying this criterion to an individual case.

"Effective" means a health intervention that may reasonably be expected to produce the intended results and to have expected benefits that outweigh potential harmful effects.

"Health intervention" means an item or service delivered or undertaken primarily to treat a medical condition or to maintain or restore functional ability. A health intervention is defined not only by the intervention itself, but also by the medical condition and patient indications for which it is being applied. New interventions for which clinical trials have not been conducted and effectiveness has not been scientifically established shall be evaluated on the basis of professional standards of care or expert opinion. For existing interventions, scientific evidence shall be considered first and, to the greatest extent possible, shall be the basis for determinations of medical necessity. If no scientific evidence is available, professional standards of care shall be considered. If professional standards of care do not exist or are outdated or contradictory, decisions about existing interventions shall be based on expert opinion. Giving priority to scientific evidence shall not mean that coverage of existing interventions shall be denied in the absence of conclusive scientific evidence. Existing interventions may meet the definition of medical necessity in the absence of scientific evidence if there is a strong conviction of effectiveness and benefit expressed through up-to-date and consistent professional standards of care, or in the absence of such standards, convincing expert opinion.

"Health outcomes" mean outcomes that affect health status as measured by the length or quality of a patient's life, primarily as perceived by the patient.

"Medical condition" means a disease, illness, injury, genetic or congenital defect, pregnancy, or a biological or psychological condition that lies outside the range of normal, age-appropriate human variation.

"Physician designee" means a physician or other health care practitioner designated to assist in the decision-making process

who has training and credentials at least equal to the treating licensed health care provider.

"Scientific evidence" means controlled clinical trials that either directly or indirectly demonstrate the effect of the intervention on health outcomes. If controlled clinical trials are not available, observational studies that demonstrate a causal relationship between the intervention and the health outcomes may be used. Partially controlled observational studies and uncontrolled clinical series may be suggestive, but do not by themselves demonstrate a causal relationship unless the magnitude of the effect observed exceeds anything that could be explained either by the natural history of the medical condition or potential experimental biases. Scientific evidence may be found in the following and similar sources:

- (1) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff;
- (2) Peer-reviewed literature, biomedical compendia, and other medical literature that meet the criteria of the National Institutes of Health's National Library of Medicine for indexing in Index Medicus, Excerpta Medica (EMBASE), Medline, and MEDLARS database Health Services Technology Assessment Research (HSTAR);
- (3) Medical journals recognized by the Secretary of Health and Human Services under section 1861(t)(2) of the Social Security Act, as amended;
- (4) Standard reference compendia including the American Hospital Formulary Service-Drug Information, American Medical Association Drug Evaluation, American Dental Association Accepted Dental Therapeutics, and United States Pharmacopoeia-Drug Information;
- (5) Findings, studies, or research conducted by or under the auspices of federal agencies and nationally recognized federal research institutes including but not limited to the Federal Agency for Health Care Policy and Research, National Institutes of Health, National Cancer Institute, National Academy of Sciences,

Centers for Medicare and Medicaid Services, Congressional Office of Technology Assessment, and any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health services; and (6) Peer-reviewed abstracts accepted for presentation at major medical association meetings.

"Treat" means to prevent, diagnose, detect, provide medical care, or palliate.

"Treating licensed health care provider" means a licensed health care provider who has personally evaluated the patient. [L 2000, c 250, §8; am L 2011, c 43, §18]

Not a Health Mandate

-AG letter,

<https://drive.google.com/drive/u/0/folders/1ICOxigJVu7vLTNKhJTWj24IKdn1oMrZ>

-CMS email

Life-saving and nominal Cost to Insurance Providers

<https://hub.jhu.edu/2015/12/03/transgender-health-insurance-cost-effective/>

Research from the Johns Hopkins Bloomberg School of Public Health suggests it would actually be cost-effective to cover those expenses. Overall, the budget impact for society would be minimal, researchers determined. They calculated that the costs would be fewer than two pennies per month for every person with health insurance coverage in the United States.¹

Medically necessary treatments like gender-reassignment surgery and hormone-replacement therapy are also an investment in reducing patients' future health expenses.²

IC Letter Urging Posting of Coverage, includes 432D agencies

NCTE/TLC Letter to IC

¹ William V. Padula, Shiona Heru, Jonathan D. Campbell, Societal Implications of Health Insurance Coverage for Medically Necessary Services in the U.S. Transgender Population: A Cost-Effectiveness Analysis, *Journal of General Internal Medicine*, 31, 394–401 (2016) available at <https://link.springer.com/article/10.1007/s11606-015-3529-6>.

² Julie Beck, Covering Transgender Care Is Good Economics for Insurance Companies, *The Atlantic*, <https://www.theatlantic.com/health/archive/2015/12/covering-transgender-health-care-is-good-economics-for-insurance-companies/417804/>.

[-https://cca.hawaii.gov/ins/files/2021/10/Commissioners-Memo-2021-13H.pdf](https://cca.hawaii.gov/ins/files/2021/10/Commissioners-Memo-2021-13H.pdf)

Testimony from last year -

<https://docs.google.com/document/d/1YibT9UafHMXkTXrjxmpibbbsOjm6dhNI/edit>

HB285 testimony from last year

1. To this day, transgender people in Hawai'i are being denied care that is related to their gender identity in direct contradiction to Act 135, a law passed in 2016 meant to prevent denial of insurance on the basis of gender identity. For example, breast augmentation is medically necessary for transgender women because due to gender identity needs. Despite that, insurer's continue to deny trans women the necessary surgery because the insurers claim it is cosmetic. In effect insurers discriminate on the basis of gender identity in violation of federal and state law every time they dismiss and deny breast augmentation and other similar medically necessary surgeries and treatments.³
2. Gender transition (or gender identity) related care is medically necessary. SCR161/SR126 is a clarification of the current law, not a mandate to cover more. Insurance providers are already required to treat health care services related to gender transition (gender identity) treatments as medically necessary because to deny such treatment or care would be a denial based on gender identity. Because transgender people seek surgeries and treatment due to their gender identity, every time an insurance provider denies coverage of such care they break the law.

Despite the law, insurance companies deny transgender people medically necessary care because they claim surgeries such as breast augmentation are cosmetic.

Current language of the law: (a) No individual and group hospital and medical service policy, contract, plan, or agreement that provides health care coverage shall discriminate with respect to participation and coverage under the policy, contract, plan, or agreement against any person on the basis of actual gender identity or perceived gender identity.

Meaning of medical necessity:

³ Affordable Care Act Section 1557 : . . . an individual shall not, on the ground prohibited under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), . . . be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including . . . contracts of insurance. . . “; Haw. Rev. Stat. § 431:10A-118.3; Haw. Rev. Stat. § 432D-26.3

Hormone therapy and surgery have been found to be medically necessary to alleviate gender dysphoria in many people (American Medical Association, 2008; Anton, 2009; The World Professional Association for Transgender Health, 2008).⁴

Genital and breast/chest surgeries as medically necessary treatments for gender dysphoria are to be undertaken only after assessment of the patient by qualified mental health professionals, as outlined in section VII of the SOC. These surgeries may be performed once there is written documentation that this assessment has occurred and that the person has met the criteria for a specific surgical treatment. By following this procedure, mental health professionals, surgeons, and of course patients, share responsibility for the decision to make irreversible changes to the body.⁵

3. The insurance office and providers claimed that an audit is legally required under Hawai'i Revised Statute §23-51 but that's not true because **the bill does not mandate more care. The bill clarifies insurance providers legal duty under both state and federal law.** Further, the bill uses "may" include, not "shall" (meaning not required) for the types of surgeries and treatments listed and the list is non-exhaustive meaning more treatments or surgeries could be added. The language of the bill was as follows:

d) All health care services related to gender transition treatments shall be considered medically necessary and not cosmetic; provided the policy also provides coverage for those services when the services are offered for purposes other than gender transition. These services may include, but are not limited to:

The language of the statute claimed to be relevant:

§23-51 Proposed mandatory health insurance coverage; impact assessment report. Before any legislative **measure that mandates** health insurance coverage for specific health services, specific diseases, or certain providers of health care services as part of individual or group health insurance policies, can be considered, there shall be concurrent resolutions passed requesting the auditor to prepare and submit to the legislature a report that assesses both the social and financial effects of the proposed mandated coverage. The concurrent resolutions shall designate a specific legislative bill that:

- (1) Has been introduced in the legislature; and

⁴ The World Professional Association for Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People 8 (2011).

⁵ The World Professional Association for Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People 55 (2011).

- (2) Includes, at a minimum, information identifying the:
 - (A) Specific health service, disease, or provider that would be covered;
 - (B) Extent of the coverage;
 - (C) Target groups that would be covered;
 - (D) Limits on utilization, if any; and
 - (E) Standards of care.

DAVID Y. IGE
GOVERNOR



HOLLY T. SHIKADA
ATTORNEY GENERAL

VALERIE M. KATO
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

January 18, 2022

The Honorable Chris Lee
Senator, Twenty-Fifth District
The Thirty-First Legislature
State of Hawaii
State Capitol, Room 216
Honolulu, Hawaii 96813

Dear Senator Lee:

Re: Transgender Individuals' Access to Medical Care in Hawaii

In your letter dated December 1, 2021, you asked for an opinion from our office on two questions about whether two reports by the legislative auditor concerning the social and financial impact of mandated health insurance coverage are required by section 23-51, Hawaii Revised Statutes. Specifically, you asked:

- (1) Whether Senate Bill No. 752 (2021) is considered a health mandate that should trigger a "sunrise analysis" by the state auditor pursuant to sections 23-51 and -52, Hawaii Revised Statutes; and
- (2) Why Act 135, Session Law Hawaii 2016, was not considered a health mandate triggering a "sunrise analysis" pursuant to sections 23-51 and -52, Hawaii Revised Statutes.

We note that you raised these two questions in a request for an informal opinion by a letter dated September 1, 2021. Our answers here do not deviate substantially from the informal advice given by Andrea J. Armitage by letter dated September 23, 2021.

- (1) Whether Senate Bill No. 752 (2021) is considered a health mandate that should trigger a "sunrise analysis" by the state auditor pursuant to sections 23-51 and -52, Hawaii Revised Statutes.

Senate Bill No. 752 would amend sections 431:10A-118.3 and 432:1-607.3, Hawaii Revised Statutes (HRS). These two sections were added to their respective chapters of HRS by sections 2 and 4 of Act 135, 2016 Haw. Sess. Laws 447 and 449. Among other things, Senate Bill No. 752 would amend the medical necessity of any treatment in both sections to be 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.”

This amended definition of medical necessity could be construed as a mandate for new health insurance coverage of specific health services, specific diseases, or certain providers of health care services. However, subsection (d) of each of the two new sections provides, in part:

All health care services related to gender transition treatments shall be considered medically necessary and not cosmetic; provided the policy also provides coverage for those services when the services are offered for purposes other than gender transition (emphasis added), page 4, lines 13-17, and page 9, lines 7-11 of Senate Bill No. 752.

Although Senate Bill No. 752 lists fourteen health services that are to be considered among those health care services related to gender transition treatments, subsection (d) deems those services as being medically necessary only when the policy “provides coverage for those services when the services are offered for purposes other than gender transition.” The effect of subsection (d) is not to mandate specific health services but to prohibit discrimination against persons needing those health services for gender transition if those health services are otherwise covered by the policy when the health services are offered for purposes other than gender transition. As noted in the September 23 informal advice letter, “if a health insurance plan does not already cover ‘Laser hair removal’ services, Senate Bill No. 752 would not mandate the plan to do so for purposes of gender transition.”

As this bill does not require a new health mandate - it prohibits discrimination against persons needing the procedures and the reasons for needing the procedures - it does not trigger the requirement for a “sunrise analysis.”

(2) Why Act 135, Session Law Hawaii 2016, was not considered a health mandate triggering a “sunrise analysis” pursuant to sections 23-51 and -52, Hawaii Revised Statutes.

Act 135, 2016 Haw. Sess. Laws 447, enacted new sections 431-10A-118.3, 432:1-607.3, and 432D-26.3, HRS, that each prohibit discrimination “with respect to participation and coverage under the policy, contract, plan, or agreement against any person on the basis of actual gender identity or perceived gender identity.” Significantly, subsections (b)(4)(A) of the three then new sections included in discrimination the “[d]enying, canceling, or limiting coverage for services on the basis of actual gender identity or perceived gender identity including but not limited to the following: (A) Health care services related to gender transition; provided that there is coverage under the policy, contract, plan, or agreement for the services when the services are not related to gender transition” (emphasis added). See Act 135, 2016 Haw. Sess. Laws 448, 449, and 450.

The Honorable Chris Lee

January 18, 2022

Page 3

The effect of Act 135's three subsections (b)(4)(A) is analogous to the two subsections (d) of Senate Bill No. 752--if certain health care services are covered by the policy, contract, plan, or agreement when the services are not related to gender transition, then it is unlawful to deny coverage for those certain health care services when they are related to gender transition. The effect of the subsections (b)(4)(A) is not to mandate specific health care services but to prohibit discrimination against persons who need those health care services for gender transition if those services are otherwise covered by the policy, contract, plan, or agreement when the health care services are not related to gender transition. As such, the requirement for a "sunrise analysis" is not triggered.

Very truly yours,

Blair Goto

Blair Goto
Deputy Attorney General

APPROVED:



Holly T. Shikada
Attorney General



National Center for Transgender Equality
1032 15th Street NW #199;
Washington, DC 20005

Transgender Law Center
PO Box 70976
Oakland, CA 94612-0976

April, 27, 2021

Colin M. Hayashida
Insurance Commissioner
Department of Commerce and Consumer Affairs
King Kalakaua Building
335 Merchant Street, Rm. 213
Honolulu, Hawaii 96813

cc: Hawaii Medical Service Association (HMSA)
818 Ke'eaumoku St,
Honolulu, HI 96814

Dear Mr. Hayashida,

We, the National Center for Transgender Equality and Transgender Law Center, write to request you ensure that transition-related care, including surgical treatments such as breast augmentation, is deemed medically necessary care for many transgender people and therefore subject to Hawai'i's insurance nondiscrimination laws enacted in 2016 (§ [431:10A-118.3](#) & § [432D-26.3](#)) and the Patient Protection and Affordable Care Act, section 1557a (**42 U.S.C. 18116**). Refusal or failure to cover medically necessary transition-related care is discrimination on the basis of actual gender identity and on the basis of sex. The National Center for Transgender Equality (NCTE) is one of the nation's leading social justice organizations working for life-saving change for transgender people at the federal, state and local level. We believe in the critical importance of eliminating health disparities and ensuring that all people, transgender individuals and their families, do not face discriminatory barriers when seeking quality, affordable health coverage and care. Transgender Law Center (TLC) is the largest national trans-led organization advocating for a world in which all people are free to define themselves and their futures.



Grounded in legal expertise and committed to racial justice, TLC employs a variety of community-driven strategies to keep transgender and gender nonconforming people alive, thriving, and fighting for liberation.

Transition-related care, including surgical care, is medically necessary and lowers suicidal ideation and alleviates negative mental health symptoms for transgender populations

There is an overwhelming and growing consensus among major medical organizations—including the American College of Obstetricians and Gynecologists (ACOG)¹, the World Medical Association (WMA)², the American Medical Association (AMA)³, the Pediatric Endocrine Society⁴, the Endocrine Society⁵, the American Academy of Child & Adolescent Psychiatry (AACAP)⁶, the World Professional Association for Transgender Health (WPATH)⁷, the American Public Health Association (APHA)⁸ and the American Psychological Association (APA)⁹—that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary and should be fully covered by patients’ insurance. The broad medical support is directly influenced by robust research literature,

¹ ACOG. (2021). ACOG Releases Guidance on Health Care for Transgender and Gender Diverse Individuals. Retrieved from <https://www.acog.org/news/news-releases/2021/02/acog-guidance-health-care-for-transgender-gender-diverse-in-dividuals>

² WMA. (2020). WMA - The World Medical Association-WMA Statement on Transgender People. Retrieved from <https://www.wma.net/policies-post/wma-statement-on-transgender-people/>

³ AMA. (2019). Health insurance coverage for genderaffirming care of transgender patients (Issue brief). Retrieved from <https://www.ama-assn.org/system/files/2019-03/transgender-coverage-issue-brief.pdf>

⁴ Hembree, W. C., Cohen-Kettenis, P. T., Gooren, L., Hannema, S. E., Meyer, W. J., Murad, M. H., ... & T’Sjoen, G. G. (2017). Endocrine treatment of gender-dysphoric/gender-incongruent persons: an endocrine society clinical practice guideline. *The Journal of Clinical Endocrinology & Metabolism*, 102(11), 3869-3903.

⁵ Endocrine Society. (2020). Transgender Health. Retrieved from <https://www.endocrine.org/advocacy/position-statements/transgender-health>

⁶ American Academy of Child & Adolescent Psychiatry. (2019). AACAP Statement Responding to Efforts to ban Evidence-Based Care for Transgender and Gender Diverse Youth. Retrieved from https://www.aacap.org/AACAP/Latest_News/AACAP_Statement_Responding_to_Efforts-to_ban_Evidence-Based_Care_for_Transgender_and_Gender_Diverse.aspx

⁷ Coleman, E., Bockting, W., Botzer, M., Cohen-Kettenis, P., DeCuypere, G., Feldman, J., ... & Zucker, K. (2012). Standards of care for the health of transsexual, transgender, and gender-nonconforming people, version 7. *International journal of transgenderism*, 13(4), 165-232.

⁸ Promoting Transgender and Gender Minority Health through Inclusive Policies and Practices. (2016). Retrieved from <https://apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2017/01/26/promoting-transgender-and-gender-minority-health-through-inclusive-policies-and-practices>

⁹ Anton, B. S. (2009). Proceedings of the American Psychological Association for the legislative year 2008: Minutes of the annual meeting of the Council of Representatives. *American Psychologist*, 64, 372–453. doi:10.1037/a0015932



spanning decades, on transition-related care and its beneficial impacts within the transgender community. Specifically, the literature review suggests that gender-affirming and transition-related care services are significantly associated with improvements on mental health outcome measures such as the reduction of suicidal ideation, depression and anxiety.¹⁰ Furthermore, many studies have found that transition-related surgical treatments were significantly associated with higher levels of body satisfaction, self-esteem and quality of life.¹¹

¹⁰ Keo-Meier C, Herman LI, Reisner SL, Pardo ST, Sharp C, & Babcock JC (2015). Testosterone treatment and MMPI-2 improvement in transgender men: A prospective controlled study. *Journal of Consulting and Clinical Psychology*, 83(1), 143–156. doi:10.1037/a0037599; Wilson, E. C., Chen, Y. H., Arayasirikul, S., Wenzel, C., & Raymond, H. F. (2015). Connecting the dots: examining transgender women’s utilization of transition-related medical care and associations with mental health, substance use, and HIV. *Journal of Urban Health*, 92(1), 182-192.; Mueller, S. C., De Cuypere, G., & T’Sjoen, G. (2017). Transgender research in the 21st century: a selective critical review from a neurocognitive perspective. *American Journal of Psychiatry*, 174(12), 1155-1162.; Valentine, S. E., & Shipherd, J. C. (2018). A systematic review of social stress and mental health among transgender and gender non-conforming people in the United States. *Clinical Psychology Review*, 66, 24-38.; Beckwith, N., Reisner, S. L., Zaslou, S., Mayer, K. H., & Keuroghlian, A. S. (2017). Factors associated with gender-affirming surgery and age of hormone therapy initiation among transgender adults. *Transgender health*, 2(1), 156-164.; Tucker, R. P., Testa, R. J., Simpson, T. L., Shipherd, J. C., Blosnich, J. R., & Lehavot, K. (2018). Hormone therapy, gender affirmation surgery, and their association with recent suicidal ideation and depression symptoms in transgender veterans. *Psychological medicine*, 48(14), 2329-2336.

¹¹ van de Grift, T. C., Elaut, E., Cerwenka, S. C., Cohen-Kettenis, P. T., Cuypere G. D., Richter-Appelt, H., & Kreukels, B.P. (2017). Effects of medical interventions on gender dysphoria and body image. *Psychosomatic Medicine*, 79(7), 815-823, <https://www.ncbi.nlm.nih.gov/pubmed/28319558> (longitudinal study finding substantially lower rates of gender dysphoria, psychological symptoms, and body dissatisfaction after surgical or hormone treatment); Owen-Smith, A.A., Gerth, J, Sineath R.C., Brazilay, J., et al. (2018). Association between gender confirmation treatments and perceived gender congruence, body image satisfaction, and mental health in a cohort of transgender individuals. *Journal of Sexual Medicine*, 15(4), 591-600. <https://www.ncbi.nlm.nih.gov/pubmed/29463478> (finding that transition-related care, including surgical care, is associated with substantially higher self-esteem and lower levels of depression and anxiety); Nelson, L., Whallett, E., & McGregor, J. (2009). Transgender patient satisfaction following reduction mammoplasty. *Journal of Plastic, Reconstructive & Aesthetic Surgery* 62(3), 331-334 (reduction mammoplasty for transgender people associated with high patient satisfaction and improved quality of life); Parola, N., Bonierbale, M., Lemaire, A., Aghababian, V., Michel, A., & Lançon, C. (2010). Study of quality of life for transsexuals after hormonal and surgical reassignment. *Sexologies*, 19(1), 24-28 (finding improved quality of life among patients after surgery); Ruppin, U. & Pfäfflin, Friedemann. (2015). Long-Term Follow-Up of Adults with Gender Identity Disorder. *Archives of Sexual Behavior*, 44(5), 1321-1329 (study of 71 transgender people 10 or more years after a legal name change, finding that participants showed significantly fewer psychological and interpersonal problems and a substantially increased life satisfaction at follow-up than at the time of the initial consultation); Ainsworth, T. A. & Spiegel, J. H. (2010). Quality of life of individuals with and without facial feminization surgery or gender reassignment surgery. *Quality of Life Research*, 19(7), 1019-1024. <https://www.ncbi.nlm.nih.gov/pubmed/20461468> (finding that transgender women who had received genital and/or facial surgery had higher mental health-related quality of life than transgender women who had not received either surgery); Papadopoulos, N. A., Zavlin, D., Lellé, J., Henrich, G., et al. (2017). Male-to-female sex reassignment surgery using the combined technique leads to increased quality of life in a prospective study. *Plastic and Reconstructive Surgery*, 140(2), 286-294 (prospective study found improved psychological symptoms and quality of life after surgery, compared to patients’ baseline preoperative responses).



Breast augmentation (along with other surgical treatments) is often medically necessary and routinely denying coverage violates Hawai'i's insurance nondiscrimination laws enacted in 2016 (§ [431:10A-118.3](#) & § [432D-26.3](#))

HMSA's 'Gender Identity Services' policy¹² does not specifically exclude transition-related care; however, breast augmentation (along with other surgical treatments) when performed to treat gender dysphoria are labeled as presumptively cosmetic in direct violation of the law. HMSA covers breast augmentation (along with other surgical treatments) when performed to treat other conditions without placing a 'presumptively cosmetic' limitation on coverage¹³. When HMSA, or any other insurance carrier, defines transition-related care as presumptively cosmetic and requires transgender patients and their doctors to overcome such a presumption in order to have care recognized as medically necessary and therefore covered, transgender people are not equally able to access insurance coverage—their coverage for services is limited on the basis of actual gender identity. In the case of HMSA, this limitation is clear when the standard for receiving transition-related breast augmentation is compared with the standard for receiving the same service when not transition-related. HMSA further clarifies its limitation on transition-related care in its Cosmetic and Reconstructive Surgery and Services policy which states, “[c]osmetic services are medical and nonmedical services that . . . are prescribed for psychological or psychiatric reasons.”¹⁴ Commissioner, we urge you to clearly affirm that transition-related care, including surgical treatments, is medically necessary for many transgender people and cannot be subject to any presumptively cosmetic limitations.

Violations of Hawai'i's insurance nondiscrimination laws enacted in 2016 (§ [431:10A-118.3](#) & § [432D-26.3](#)) are likely violations of federal law including the Patient Protection and Affordable Care Act, section 1557a ([42 U.S.C. 18116](#))

Placing limitations on health care specific to transgender Hawai'i residents not only violates state law, it also runs afoul of the Affordable Care Act's nondiscrimination provisions ([42 U.S.C. § 18116](#)). The Affordable Care Act sought to expand insurance coverage to as many people as possible. One strategy to expand coverage was to protect patients from discrimination, including discrimination on the basis of sex. Federal courts and the Obama administration interpreted the sex discrimination prohibited by the Affordable Care Act to include discrimination on the basis of transgender status. In addition, on his first day in office, President Biden required all federal

¹² HMSA. Gender Identity Services. Retrieved from https://hmsa.com/portal/provider/MM.06.026_Gender_Identity_Services.pdf

¹³ HMSA. Cosmetic and Reconstructive Surgery and Services. Retrieved from https://hmsa.com/portal/provider/MM.10.001_Cosmetic_and_Reconstructive_Surgery_and_Services.pdf

¹⁴ HMSA. Cosmetic and Reconstructive Surgery and Services. Retrieved from https://hmsa.com/portal/provider/MM.10.001_Cosmetic_and_Reconstructive_Surgery_and_Services.pdf



departments and agencies, including the Department of Health and Human Services (HHS), to review their regulations and policies to ensure each fully implemented the Supreme Court’s decision in Bostock v Clayton County.^{15 16}

Conclusion

It is discriminatory and wrong to single out any group and deny them access to medically necessary care. Putting limitations on medically necessary transition-related surgical treatments negatively impacts the health of so many transgender Hawai’i residents and in some cases puts their lives at risk. We request the Commissioner use his authority to ensure that transition-related care is deemed medically necessary and not subject to limitations not placed on the same services when provided for other reasons. HMSA, and every other insurance carrier must provide coverage for medically necessary and appropriate care to all Hawai’i residents in a nondiscriminatory manner.

To place ‘presumptively cosmetic’ limitations on transition-related surgical treatments, such as breast augmentation, goes against the overwhelming consensus of medical experts and recognized treatment protocols for gender dysphoria. Such limitations are discriminatory and deny access to lifesaving care for many transgender Hawai’i residents. Routine denial of care negatively impacts the mental and physical health of the transgender community— and in some cases places lives at risk.

As the Hawai’i Insurance Commissioner, we ask that you protect the health of all transgender residents of Hawai’i, fully enforce Hawai’i’s insurance nondiscrimination laws, and affirm that all transition-related care, including surgical treatment, is medically necessary.

Sincerely,

¹⁵ *Bostock v. Clayton County*, 140 S. Ct. 1731, [590 U.S.](#) ____ (2020).

¹⁶ Executive Order 13988 of Jan 20, 2021: [Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation](#).



D. Ojeda
Policy Advocate
National Center for Transgender Equality

Ian Anderson
Legal Services Project Manager
Transgender Law Center

HB-2405

Submitted on: 2/10/2022 4:52:21 PM

Testimony for HHH on 2/15/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Tiare Sua	Individual	Support	No

Comments:

Dear Chair Yamane, Vice-Chair Tam, and Honorable Members,

I strongly support HB2405 which updates the language on the transgender anti-discrimination health insurance law and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary and should be fully covered by patients' insurance. Without insurance coverage of these medically necessary procedures (that are provided for the cisgender people), trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) that ignore the law and medical necessity of gender-affirming care by passing this bill.

When insurance companies categorically deny certain gender-affirming procedures by saying they are cosmetic in their policies, insurers attempt to take themselves out of HRS §432E-1.4(a) (Medical Necessity Statute). The Medical Necessity Statute requires coverage of a procedure if (1) it is not specifically excluded (2) is recommended by a licensed healthcare provider and (3) is medically necessary. Because (1) the anti-discrimination law prohibits insurance companies from categorically excluding surgeries like facial feminization and breast augmentation for transgender people (a protected gender identity) in their policies, (2) licensed doctors are recommending these procedures, and (3) gender-affirming procedures (even those that HMSA and Kaiser have categorically) are supported by the majority of medical opinion, insurance companies are subject to the controlling definition of medical necessity in the HRS 432E.

Our transgender community members deserve healthcare that meets their needs, just like all members of our community. Thank you for investing in the health and safety of our mähū and trans community members!

Sincerely,

Tiare Sua

HB-2405

Submitted on: 2/10/2022 4:57:07 PM

Testimony for HHH on 2/15/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Ikaika Regidor	Individual	Support	No

Comments:

Dear Chair Yamane, Vice-Chair Tam, and Honorable Members,

I strongly support HB2405 which updates the language on the transgender anti-discrimination health insurance law and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary and should be fully covered by patients' insurance. Without insurance coverage of these medically necessary procedures (that are provided for the cisgender people), trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) that ignore the law and medical necessity of gender-affirming care by passing this bill.

When insurance companies categorically deny certain gender-affirming procedures by saying they are cosmetic in their policies, insurers attempt to take themselves out of HRS §432E-1.4(a) (Medical Necessity Statute). The Medical Necessity Statute requires coverage of a procedure if (1) it is not specifically excluded (2) is recommended by a licensed healthcare provider and (3) is medically necessary. Because (1) the anti-discrimination law prohibits insurance companies from categorically excluding surgeries like facial feminization and breast augmentation for transgender people (a protected gender identity) in their policies, (2) licensed doctors are recommending these procedures, and (3) gender-affirming procedures (even those that HMSA and Kaiser have categorically) are supported by the majority of medical opinion, insurance companies are subject to the controlling definition of medical necessity in the HRS 432E.

Our transgender community members deserve healthcare that meets their needs, just like all members of our community. Thank you for investing in the health and safety of our mähū and trans community members!

Sincerely,

Ikaika Regidor

HB-2405

Submitted on: 2/10/2022 7:14:53 PM

Testimony for HHH on 2/15/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Thaddeus Pham	Individual	Support	No

Comments:

Dear Chair Yamane, Vice Chair Tam, and Members of the HHH Committee:

As a public health professional and concerned member of the LGBTQIA+ community, I strongly support HB2405 which updates the language on the transgender anti-discrimination health insurance law and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary and should be fully covered by patients' insurance. Without insurance coverage of these medically necessary procedures (that are provided for the cisgender people), trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) that ignore the law and medical necessity of gender-affirming care by passing this bill.

When insurance companies categorically deny certain gender-affirming procedures by saying they are cosmetic in their policies, insurers attempt to take themselves out of HRS §432E-1.4(a) (Medical Necessity Statute). The Medical Necessity Statute requires coverage of a procedure if (1) it is not specifically excluded (2) is recommended by a licensed healthcare provider and (3) is medically necessary. Because (1) the anti-discrimination law prohibits insurance companies from categorically excluding surgeries like facial feminization and breast augmentation for transgender people (a protected gender identity) in their policies, (2) licensed doctors are recommending these procedures, and (3) gender-affirming procedures (even those that HMSA and Kaiser have categorically) are supported by the majority of medical opinion, insurance companies are subject to the controlling definition of medical necessity in the HRS 432E.

Thank you for investing in the health and safety of our māhū and trans community members!

With gratitude,

Thaddeus Pham (he/him)



Hi there! My name is Breanna Zoey, my pronouns are she/her, and I am transgender. I appreciate the opportunity to submit this testimony **IN SUPPORT** of HB2405. I am available to any committee or member who wishes to speak with me to better understand my real-life experiences with our insurance companies in Hawaii and the discrimination that too many trans people like me currently face with health insurance coverage.

I would also like to propose an amendment to this legislation (I also proposed this to the companion, SB2835, and it was accepted). **The amendment proposed is to require that health plans cannot deny trans care on the basis of medical necessity unless a health care provider with experience prescribing or delivering gender affirming treatment has also reviewed and confirmed the appropriateness of the adverse benefit determination.** Even if this legislation is passed as-is, I foresee instances where insurance companies will still arbitrarily deny trans care on the basis of medical necessity and gender identity, and without involving appropriate reviewers in the process. This proposed amendment would help ensure that insurance companies are using experts in the review and denial process rather than continuing to make arbitrary denials based on input from non-experts who are not familiar with trans health care or modern day medical consensus, as is the case today. If an insurance company reads my proposed amendment and says *'trans health care is highly specialized and we don't have the expertise to use in reviews as Breanna's amendment is suggesting,'* I think that demonstrates why we need legislation like this (and my proposed amendment) to pass in the first place!!!

Highlights of my testimony and personal experience with insurance as a trans person

(trigger warning: mention of self-harm and suicide)

1. My insurance company has arbitrarily denied my transgender health care coverage requests over and over in 2021. They keep calling my care "not medically necessary" and say that it will not improve the quality of my life. Insurance says these things despite the outside world having already shown this care to be medically necessary, appropriate, and in fact ***life saving***
2. Despite my strength and resilience, even the strongest folks can only take so much discrimination sometimes. My insurance company's persistent discrimination and hurtful, arbitrary, and wrongful comments and adverse determinations led me to the brink of **suicide** a few times in 2021, some of the darkest moments of my entire life. Thank goodness I hung in there and did not let an insurance company get the best of me and end my life, because now that I'm winning the insurance fights and accessing the health care coverage that I need, my quality of life has never been better!!! But this is unfortunately what happens far too often when trans people are denied access to the health care and coverage they need. **Approving medically necessary trans health care saves lives, plain and simple, and I'm a living example of that.**
3. My insurance company consistently uses non-experts in the review and denial process who seem to have no clinical experience treating or prescribing gender affirming care, and who refuse to accept the medical consensus that the world knows to be factual and which is provided to them time and time again. Every time I've been denied, my insurance company has used a run-of-the-mill pediatrician and a general hospitalist, who I argue have never demonstrated that they've even reviewed or considered any of the information that I or my providers have submitted.
4. Every single time I've challenged my insurance company's denials or their refusal and resistance to provide coverage in 2021, I have won and my care was ultimately approved, sometimes against the insurance company's will. I've won coverage for **breast augmentation, facial gender confirmation surgery, tracheal shave, electrolysis prior to bottom surgery, and soon I hope to win on the facial electrolysis IMR.** Every arbitrary insurance denial is being overturned one by one now that people like me are starting to fight back,

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demonstrating the denials our Hawaii insurance companies are issuing are not appropriate or grounded in reality

5. I have had to go to such lengths as to challenge the insurance company using the Independent Medical Review (IMR) rights and protections that the affordable care act affords to me, and every time so far the medical necessity of my care was confirmed and insurance denials were overturned from the outside
6. My health care needs are not inherently special or unique. Other trans people need coverage for the same care I've been able to get approved for in 2021, yet my insurance company continues to deny my friends' health care as "not medically necessary" even after the company has already been overturned on my care and provided with enough scientific evidence and research to cover it for other people
7. This legislation would not be a new mandate. Insurance companies already cover the same health care services for non-transgender individuals and conditions, and I have it in writing from my insurance company that this is the case for my facial gender confirmation surgery, tracheal shave, and facial electrolysis (and we know breast reconstruction/augmentation is covered per the Women's Health and Cancer Rights Act of 1997). I'm happy to provide documents to the committee or members where HMSA confirmed (in writing to me and also to the insurance commissioner) that my requested trans health care is already a benefit of my HMSA plan

Our insurance companies in general have been flagrantly violating existing non-discrimination laws by continuing to deny so much trans health care and arbitrarily calling it "not medically necessary." The scientific literature, the peer-reviewed research, the academic journals, the global professional and expert associations who write the rules and recommendations for trans health care, they have all already evidenced that trans health care is medically necessary and can be vital to an individual's well-being and safety.

Through my challenges to my health insurance company in the past year and by using the protections afforded to me by the ACA, I have overturned the insurance denials and got approved for a few gender affirming surgeries and care that continue to be denied for others who cannot or do not fight as hard as I was able to... There is nothing special or inherently unique about me or my health care needs. I am just an ordinary transgender schmuck who knows her rights under state and federal law and who will hold her insurance company accountable. The health care I have and continue to personally be approved for is nothing but commonsense, and we need to ensure this care and coverage is available to everybody who needs it and without subjecting them to intense fights with big insurance.

My experiences with insurance in 2021 as a trans person (trigger warning: mention of suicide)

My insurance company nearly cost me my life in 2021 by refusing to provide me with coverage for medically necessary care and through some of the horrific things that were said and done throughout the process of denying my care time and time again. In kindergarten language, because of my insurance company I was the blink of an eye away from ending my life by suicide last year (I had never felt such depression and hopelessness prior to the insurance discrimination). It's not because I am weak or that I am not resilient, and in fact to the contrary I think I've been incredibly strong and resilient as I've successfully challenged HMSA's denials, won coverage every single time (so far), and endured some of the greatest challenges of my life.

Trans people are already marginalized and struggle in so many ways, and when folks cannot access the gender affirming care they need and want it's been shown time and time again that the prevalence of self-harm and suicide go through the roof. Even the strongest of individuals cannot forever evade the realities of continued and persistent discrimination. I honestly do not know how I am still here today, but I am sure glad that I did not die otherwise I wouldn't be able to share my experiences or continue to advocate against big insurance and to help

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ensure we put an end to this discrimination. Since I've been able to access the gender affirming health care coverage I need, my quality of life has never been better and those feelings of depression and hopelessness have largely subsided. My insurance company literally told me in writing (see denial quotes on next page) that my health care wouldn't reduce the likelihood of self-harm or suicide, and that my health care wouldn't improve the quality of my life. I don't know how I can better demonstrate that my insurance company isn't getting things right, and that they need some external encouragement. I want no one else to have to suffer or endure some of the things my insurance company put me through in 2021 and continues to put me through today.

In the last 10 months alone I have had to spend roughly 300 hours challenging HMSA and to successfully get them to approve coverage for:

- a- Gender affirming breast augmentation
- b- Facial gender confirmation surgery
- c- Tracheal shave (reduction thyroid chondroplasty)
- d- Electrolysis coverage prior to bottom surgery
- e- Electrolysis of facial hair (currently under Independent Medical Review pursuant to the ACA, decision expected by early March 2022)

In the end, my health care has thus far ultimately been approved for coverage because it is commonsense and the world knows it to be medically necessary, but insurance did not approve any of these without first putting up a fight. For some of these I've had to use the rights and protections that the affordable care act (ACA) affords to me, like an Independent Medical Review (IMR) where the denials are reviewed by outside experts and the decision making is removed from the insurance company. Every time I've gone through the ACA's IMR process, my trans health care denials have been overturned and it just demonstrates how my insurance company is not getting things right with their denials on trans care or when they call trans health care "not medically necessary."

Reasons why HMSA has denied my trans health care needs in 2021

These are just some of the reasons that HMSA issued to me in writing when denying my personal health care coverage requests over the last year or so (spoiler alert: every single reason is not an accurate reflection of reality and is false):

- 1) "nor is there proof that in those who self-harm that [the requested service] decreases that behavior"
- 2) "there is lack of support of improvement of quality of life"
- 3) "the requested procedures are not considered effective in improving health outcomes"
- 4) "gender dysphoria does not meet the definition of medical condition"
- 5) "published, peer-reviewed data does not support that the surgical procedure performed achieves outcomes in the treatment of gender dysphoria and/or gender incongruence that are superior to or equivalent to alternative interventions for treatment"
- 6) "exaggerate[s] masculine or feminine traits beyond the range of norms found within society"
- 7) "primarily serve[s] to beautify or otherwise enhance physical appearance"
- 8) "deny as does not meet current GIS policy criteria nor medical necessity, due to lack of supporting evidence that these procedures help to improve health outcomes"
- 9) "there is no decisive or definite absolute indication that health outcomes are improved with the use of facial feminization surgery"
- 10) "the research studies that show persistent improvement in quality of life in the long term are limited"

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- 11) "there are very limited supporting data showing overall improved daily functioning following these procedures; therefore a conclusion that improved health outcomes will occur is not supported by clinical evidence. Therefore, the requested procedures are not medically necessary"
- 12) "there is limited literature review and research that support complete resolution or satisfaction upon completion of the surgical procedure"
- 13) "there is insufficient research studies that further support improvement in health outcome, daily functioning following successful completion of the surgery"
- 14) "removal of the facial hair is not critical for the process of gender reassignment"
- 15) "electrolysis of the facial hair would not improve the overall health outcome as measured by length or quality of the patient's life"
- 16) "there is no evidence of expert opinion that supports the attestation that electrolysis of facial hair improves the overall health outcome"

This is just a handful of the bogus and uninformed reasons my insurance company had denied my care for in the past 10 months, and they are all not true. To emphasize the severity of the situation we're dealing with in Hawaii, take another look at #1 above where HMSA says access to gender affirming care doesn't reduce the likelihood of self-harm and suicide. Seriously? There is no better way to demonstrate that Hawaii insurance companies do not understand trans health care at all. Since I've been able to access and get approved for gender affirming care, my quality of life has increased significantly and my depression, anxiety, and unwanted desires to self-harm have all decreased immensely, just as the research says happens when people can access gender affirming health care and coverage. The fact insurance here continues to say trans health care doesn't save lives and doesn't/won't improve quality of life is a kick in the gut to say the least and makes absolutely no sense.

Not accessing health care is not an option for most people because all that results in is increased depression and anxiety, increased gender dysphoria and misgendering, decreased social functioning, increased likelihood of physical harm and hate crimes, and unfortunately increased suicides and attempts. Access to gender affirming care quite literally saves lives, and I am a living example of that.

Financial impacts when my trans health care was denied

- While I was fighting my insurance company on their denials last year I had to take out a 401k loan to self-finance breast augmentation (which eventually was overturned and paid for by insurance)
- I was then moments away from needing to take out a second mortgage in order to keep my facial surgeries moving along (fortunately I overturned HMSA's denials using the ACA's protections before the 2nd mortgage was executed)
- In 2022 I've had to take a second/part-time job (in addition to my regular/full-time job) in order to pay for my health care needs (facial electrolysis) while I continue to challenge HMSA's denials using the ACA's protections
- I've even seriously considered renting out my apartment and living out of my car for 6-12 months out of desperation and in order to be able to help pay for my health care needs (which let me remind you are already viewed as a medical necessity and covered by existing state law, whether or not my insurance company will agree or admit it)

I've had to do and consider all of these things as a direct result of my insurance company discriminating against me and denying my medically necessary health care. No one should be required to do such things in order to access lifesaving health care that the world already views as being medically necessary.

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This legislation is not a new mandate

I want to take the time here to touch on something that came up last year and which came up when companion bill HB2835 was heard on 2/3/2022, which is the notion that this legislation would be a new mandate. This is not accurate.

With respect to my insurance company, they already view my trans health care services as covered benefits when prescribed for non-trans conditions and treatments. Every time I challenge HMSA under the affordable care act, HMSA is required to check a yes/no box that asks if my requested health care would ordinarily be a covered benefit of the plan had they not deemed it to be not medically necessary. When push comes to shove HMSA always checks the "yes" box, indicating that my requested care is already a benefit for non-trans conditions and when medically necessary. This legislation does not mandate the coverage of anything that isn't already covered and paid for by insurance... we're just tightening up the idea that insurance companies should not be discriminating against trans folks and denying health care on the basis of our gender identity and when the care is treating gender dysphoria, especially when the world already knows this health care to be medically necessary, appropriate, and well-supported. I am happy to provide written documentation, to any interested legislators or committees, where my insurance company put in writing that my trans health care requests are already covered benefits of my plan.

My independent medical reviews and appeals

Like I already said, every time I have challenged my insurance company's denials, the insurance company has been overturned and the medical necessity of my trans health care has been upheld and confirmed. I've been approved for breast augmentation, facial gender confirmation surgery, and tracheal shave. I have an IMR underway right now for facial electrolysis, because despite me providing two letters from the World Professional Association for Transgender Health (WPATH) that say 'facial electrolysis is medically necessary for trans folks,' my insurance company STILL denied my requested coverage twice and called it not medically necessary. I expect a decision on the denials to be made by early March and sure hope it's another victory where the insurance denials are overturned based on rationality, commonsense, and the existing scientific literature.

In California, nearly every single IMR that challenged discriminatory transgender-related denials in the last several years has been victorious and the insurance companies have been overturned for all sorts of care like breast augmentation, facial surgeries, facial hair removal, body contouring, voice procedures, chest masculinization, and more... From what I understand, BCBS of CA was overturned on their discriminatory denials so regularly via IMRs that after a few years they voluntarily started covering additional transgender-related care bit by bit, until taking a relatively significant plunge more recently to do better by their trans members and reduce the need for further embarrassing IMR overturns.

I am already seeing the IMR process to be favorable to trans patients in Hawaii (because trans health care is common sense)... But even if the IMRs tend to overturn discriminatory health insurance denials in the end, the process of fighting for coverage, enduring so many hurtful actions by health insurance companies, and enduring an ACA IMR process can come with significant trauma for the patient that they may not necessarily always be able to withstand and pull through. Also, I don't think the ACA's IMR process can be used in exactly the same ways by

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people insured under self-funded group plans or Medicaid, so we need a better solution anyway that meets the needs of the larger trans community (like passing this legislation).

Regardless of having an IMR process that seems to work in Hawaii (for those who can use it), we have the opportunity right now to alleviate the need for trans folks to endure so many unnecessary struggles. We have the opportunity to allow trans folks to access the basic health care they are already afforded by state law and the broader medical consensus. We have the opportunity to save lives by passing this legislation and preventing health insurance companies from continuing to arbitrarily deny trans care.

Insurance companies arbitrarily deny trans care by using non-expert reviewers

My insurance company has been denying much of my gender affirming care over the past 10 months by using reviewers who seem to have zero experience in treating trans patients or prescribing care for trans folks, who do not seem to understand trans health care, who do not seem to even review the science and evidence that I and my providers have been providing to them time and time again, and who simply have no business being involved in transgender decision making in my opinion. When I request coverage, HMSA requires me to submit letters of medical necessity from providers who are highly trained and experienced with trans care and who meet specific criteria and characteristics as defined by the insurance company and WPATH (like education and relevant clinical experience). However, my insurance company has not been using reviewers with comparable knowledge and expertise when reviewing and denying me. I alleged this problem last year via the insurance commissioner's office, and HMSA responded with the following:

"...the "Characteristics" set forth in Appendix A of the GIS Policy apply to a member's treating providers and not the clinical reviewers"

"...there is no requirement that a "reviewing body" must have such credentials."

In kindergarten language, my insurance company said that while they require my treating and referring providers to be highly skilled and trained in trans health care and meet specific criteria, HMSA's reviewers do not need to be comparable in knowledge and expertise, which would be fine ONLY IF HMSA would listen to and defer to the clinical judgements of the experts who are treating the patient (my insurance does not currently listen to or defer to the expertise of the experts they require me to bring into the process when requesting insurance coverage). Please tell me how that makes any sense at all. This all results in insurance companies not understanding transgender health care and they are making arbitrary and uninformed denials.

To further improve the issue of insurance companies arbitrarily denying trans care, I propose an amendment to this legislation. We must require that health plans cannot deny trans care on the basis of medical necessity unless a health care provider with experience prescribing or delivering gender affirming treatment has also reviewed and confirmed the appropriateness of the adverse benefit determination. Even if this legislation is passed as-is, I foresee instances where insurance companies will still deny trans care on the basis of medical necessity and gender identity. This proposed amendment would help ensure that in those instances insurance companies are using experts in the review and denial process rather than continuing to make arbitrary denials based on input from non-experts who are not familiar with trans health care, as is the case today. If an insurance company says 'trans health care is highly specialized and we don't have the expertise to use in reviews as Breanna's amendment is suggesting,' I think that demonstrates why we need legislation like this to pass (and my proposed amendment).

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Health plans on the mainland already cover trans health care

The majority of insurance on the mainland already understand trans health care is medically necessary and routinely cover it. For example, within blue cross blue shield alone nearly 85% of mainland states/companies already routinely cover breast augmentation for trans women, and about half routinely cover facial gender confirmation surgeries (with more starting to cover it as of 2021 and 2022). HMSA does not routinely cover this care, and in fact they routinely DENY this medically necessary care for the reasons I've listed above. Some of our Hawaii insurance companies are on the wrong side of history with all of this, and I'd love for someone to rationalize why my health care is widely viewed as medically necessary in the mainland and around the world, but because I live in Hawaii suddenly big insurance can call my care not medically necessary. It makes no sense and this shows that at least my insurance company is out of sync with the broader world.

The end

Please pass this commonsense legislation in 2022 (with my proposed amendment). There is quite literally no reason why this legislation should not pass, and there is no reason why we should allow Hawaii insurance companies to continue to flagrantly and arbitrarily deny trans health care and go against the grain of reality.

I am happy to speak more in depth with any member or committee regarding my personal experience. Thank you for this opportunity. -Breanna Zoey (she/her)

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HB-2405

Submitted on: 2/11/2022 7:13:58 AM

Testimony for HHH on 2/15/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Camaron Miyamoto	Individual	Support	No

Comments:

Aloha and thank you for this opportunity to submit written testimony in strong support of HB2405, which ensures coverage of transgender health services by local insurance payers. Provision of evidence-based, quality healthcare for transgender and gender non-binary people has been shown to improve health and well-being for both individuals and communities. For too long health insurance providers in Hawai'i have denied transgender people coverage and approval for medically necessary procedures. It is time to change this through this legislation and to align the work of insurance providers with both guidance by the Insurance Commission and the Office of the Attorney General.

HB-2405

Submitted on: 2/11/2022 8:12:32 AM

Testimony for HHH on 2/15/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Tami Whitney	Individual	Support	No

Comments:

Dear Chair Yamane, Vice-Chair Tam, and Honorable Members,

I strongly support HB2405 which updates the language on the transgender anti-discrimination health insurance law and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary and should be fully covered by patients' insurance. Without insurance coverage of these medically necessary procedures (that are provided for the cisgender people), trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) that ignore the law and medical necessity of gender-affirming care by passing this bill.

When insurance companies categorically deny certain gender-affirming procedures by saying they are cosmetic in their policies, insurers attempt to take themselves out of HRS §432E-1.4(a) (Medical Necessity Statute). The Medical Necessity Statute requires coverage of a procedure if (1) it is not specifically excluded (2) is recommended by a licensed healthcare provider and (3) is medically necessary. Because (1) the anti-discrimination law prohibits insurance companies from categorically excluding surgeries like facial feminization and breast augmentation for transgender people (a protected gender identity) in their policies, (2) licensed doctors are recommending these procedures, and (3) gender-affirming procedures (even those that HMSA and Kaiser have categorically) are supported by the majority of medical opinion, insurance companies are subject to the controlling definition of medical necessity in the HRS 432E.

Our transgender community members deserve healthcare that meets their needs, just like all members of our community. Thank you for investing in the health and safety of our māhū and trans community members!

Thank you,

Tami Whitney

HB-2405

Submitted on: 2/11/2022 8:28:41 AM

Testimony for HHH on 2/15/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Amanda Martinez	Individual	Support	No

Comments:

Dear Chair Yamane, Vice-Chair Tam, and Honorable Members,

I strongly support HB2405 which updates the language on the transgender anti-discrimination health insurance law and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary and should be fully covered by patients' insurance. Without insurance coverage of these medically necessary procedures (that are provided for the cisgender people), trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) that ignore the law and medical necessity of gender-affirming care by passing this bill.

When insurance companies categorically deny certain gender-affirming procedures by saying they are cosmetic in their policies, insurers attempt to take themselves out of HRS §432E-1.4(a) (Medical Necessity Statute). The Medical Necessity Statute requires coverage of a procedure if (1) it is not specifically excluded (2) is recommended by a licensed healthcare provider and (3) is medically necessary. Because (1) the anti-discrimination law prohibits insurance companies from categorically excluding surgeries like facial feminization and breast augmentation for transgender people (a protected gender identity) in their policies, (2) licensed doctors are recommending these procedures, and (3) gender-affirming procedures (even those that HMSA and Kaiser have categorically) are supported by the majority of medical opinion, insurance companies are subject to the controlling definition of medical necessity in the HRS 432E.

Our transgender community members deserve healthcare that meets their needs, just like all members of our community. Thank you for investing in the health and safety of our māhū and trans community members!

Sincerely,

Name

Amanda Martinez, MPH

HB-2405

Submitted on: 2/11/2022 8:54:40 AM

Testimony for HHH on 2/15/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Shandhini Raidoo	Individual	Support	No

Comments:

Aloha,

I am an obstetrician-gynecologist and I provide health care to transgender and gender diverse people. I am submitting this testimony in support of HB2405. Gender-affirming therapies, including medications and surgeries, are important and medically necessary services for trans and gender diverse people to live their lives authentically. For insurance companies to deny coverage for services based on someone's gender identity is unconscionable and harmful, and we should not permit insurance companies in our state to deny care to anyone.

Mahalo for your attention to equitable health care provision for all people in our state,
Shandhini Raidoo, MD, MPH

HB-2405

Submitted on: 2/11/2022 9:38:21 AM

Testimony for HHH on 2/15/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Jaki Knaus	Individual	Support	Yes

Comments:

Dear Chair Yamane, Vice-Chair Tam, and Honorable Members,

I strongly support HB2405 which updates the language on the transgender anti-discrimination health insurance law and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary and should be fully covered by patients' insurance. Without insurance coverage of these medically necessary procedures (that are provided for the cisgender people), trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) that ignore the law and medical necessity of gender-affirming care by passing this bill.

When insurance companies categorically deny certain gender-affirming procedures by saying they are cosmetic in their policies, insurers attempt to take themselves out of HRS §432E-1.4(a) (Medical Necessity Statute). The Medical Necessity Statute requires coverage of a procedure if (1) it is not specifically excluded (2) is recommended by a licensed healthcare provider and (3) is medically necessary. Because (1) the anti-discrimination law prohibits insurance companies from categorically excluding surgeries like facial feminization and breast augmentation for transgender people (a protected gender identity) in their policies, (2) licensed doctors are recommending these procedures, and (3) gender-affirming procedures (even those that HMSA and Kaiser have categorically) are supported by the majority of medical opinion, insurance companies are subject to the controlling definition of medical necessity in the HRS 432E.

Our transgender community members deserve healthcare that meets their needs, just like all members of our community. Thank you for investing in the health and safety of our mähū and trans community members!

Sincerely,

Jaki A. Knaus

HB-2405

Submitted on: 2/11/2022 10:51:52 AM

Testimony for HHH on 2/15/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Maddalynn Seseapasara	Individual	Support	Yes

Comments:

Dear Chair Yamane, Vice-Chair Tam, and Honorable Members,

I strongly support HB2405 which updates the language on the transgender anti-discrimination health insurance law and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary and should be fully covered by patients' insurance. Without insurance coverage of these medically necessary procedures (that are provided for the cisgender people), trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) that ignore the law and medical necessity of gender-affirming care by passing this bill.

When insurance companies categorically deny certain gender-affirming procedures by saying they are cosmetic in their policies, insurers attempt to take themselves out of HRS §432E-1.4(a) (Medical Necessity Statute). The Medical Necessity Statute requires coverage of a procedure if (1) it is not specifically excluded (2) is recommended by a licensed healthcare provider and (3) is medically necessary. Because (1) the anti-discrimination law prohibits insurance companies from categorically excluding surgeries like facial feminization and breast augmentation for transgender people (a protected gender identity) in their policies, (2) licensed doctors are recommending these procedures, and (3) gender-affirming procedures (even those that HMSA and Kaiser have categorically) are supported by the majority of medical opinion, insurance companies are subject to the controlling definition of medical necessity in the HRS 432E.

Our transgender community members deserve healthcare that meets their needs, just like all members of our community. Thank you for investing in the health and safety of our mähū and trans community members!

Sincerely,

Maddalynn Seseapasara

Kua'ana Project Manager

Hawaii Health & Harm Reduction Center

HB-2405

Submitted on: 2/11/2022 1:07:15 PM

Testimony for HHH on 2/15/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Erin Furuichi	Individual	Support	No

Comments:

Dear Chair Yamane, Vice-Chair Tam, and Honorable Members,

I strongly support HB2405 which updates the language on the transgender anti-discrimination health insurance law and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary and should be fully covered by patients' insurance. Without insurance coverage of these medically necessary procedures (that are provided for the cisgender people), trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) that ignore the law and medical necessity of gender-affirming care by passing this bill.

When insurance companies categorically deny certain gender-affirming procedures by saying they are cosmetic in their policies, insurers attempt to take themselves out of HRS §432E-1.4(a) (Medical Necessity Statute). The Medical Necessity Statute requires coverage of a procedure if (1) it is not specifically excluded (2) is recommended by a licensed healthcare provider and (3) is medically necessary. Because (1) the anti-discrimination law prohibits insurance companies from categorically excluding surgeries like facial feminization and breast augmentation for transgender people (a protected gender identity) in their policies, (2) licensed doctors are recommending these procedures, and (3) gender-affirming procedures (even those that HMSA and Kaiser have categorically) are supported by the majority of medical opinion, insurance companies are subject to the controlling definition of medical necessity in the HRS 432E.

Our transgender community members deserve healthcare that meets their needs, just like all members of our community. Thank you for investing in the health and safety of our mähū and trans community members!

Sincerely,
Erin Furuichi

HB-2405

Submitted on: 2/11/2022 2:02:13 PM

Testimony for HHH on 2/15/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Jessica Redford	Individual	Support	No

Comments:

Dear Chair Yamane, Vice-Chair Tam, and Honorable Members,

I strongly support HB2405 which updates the language on the transgender anti-discrimination health insurance law and requires insurance companies in Hawai'i to post their policies. There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary and should be fully covered by patients' insurance. Without insurance coverage of these medically necessary procedures (that are provided for the cisgender people), trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) that ignore the law and medical necessity of gender-affirming care by passing this bill. When insurance companies categorically deny certain gender-affirming procedures by saying they are cosmetic in their policies, insurers attempt to take themselves out of HRS §432E-1.4(a) (Medical Necessity Statute). The Medical Necessity Statute requires coverage of a procedure if (1) it is not specifically excluded (2) is recommended by a licensed healthcare provider and (3) is medically necessary. Because (1) the anti-discrimination law prohibits insurance companies from categorically excluding surgeries like facial feminization and breast augmentation for transgender people (a protected gender identity) in their policies, (2) licensed doctors are recommending these procedures, and (3) gender-affirming procedures (even those that HMSA and Kaiser have categorically) are supported by the majority of medical opinion, insurance companies are subject to the controlling definition of medical necessity in the HRS 432E. Our transgender community members deserve healthcare that meets their needs, just like all members of our community.

Thank you for investing in the health and safety of our māhū and trans community members!

Sincerely,

Jessica Redford, RN

Aloha,

I write in strong support of HB2405. This bill is a clarification measure to make sure insurance companies are not completely denying entire categories of treatments and surgeries for transgender people. It would continue to allow insurance companies to make determinations on a case by case basis but would prohibit the blatant discrimination that has been occurring since the law came into effect in 2017. I also believe it aligns with the original intent of Act 135 (2016).

Please pass HB2405 as is and, if necessary, revert to the language of SB752 (2021) so it is the exact same language that the Attorney General said makes it not a health mandate.

Mahalo,

Shayna

DAVID Y. IGE
GOVERNOR



HOLLY T. SHIKADA
ATTORNEY GENERAL

VALERIE M. KATO
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

January 18, 2022

The Honorable Chris Lee
Senator, Twenty-Fifth District
The Thirty-First Legislature
State of Hawaii
State Capitol, Room 216
Honolulu, Hawaii 96813

Dear Senator Lee:

Re: Transgender Individuals' Access to Medical Care in Hawaii

In your letter dated December 1, 2021, you asked for an opinion from our office on two questions about whether two reports by the legislative auditor concerning the social and financial impact of mandated health insurance coverage are required by section 23-51, Hawaii Revised Statutes. Specifically, you asked:

- (1) Whether Senate Bill No. 752 (2021) is considered a health mandate that should trigger a "sunrise analysis" by the state auditor pursuant to sections 23-51 and -52, Hawaii Revised Statutes; and
- (2) Why Act 135, Session Law Hawaii 2016, was not considered a health mandate triggering a "sunrise analysis" pursuant to sections 23-51 and -52, Hawaii Revised Statutes.

We note that you raised these two questions in a request for an informal opinion by a letter dated September 1, 2021. Our answers here do not deviate substantially from the informal advice given by Andrea J. Armitage by letter dated September 23, 2021.

- (1) Whether Senate Bill No. 752 (2021) is considered a health mandate that should trigger a "sunrise analysis" by the state auditor pursuant to sections 23-51 and -52, Hawaii Revised Statutes.

Senate Bill No. 752 would amend sections 431:10A-118.3 and 432:1-607.3, Hawaii Revised Statutes (HRS). These two sections were added to their respective chapters of HRS by sections 2 and 4 of Act 135, 2016 Haw. Sess. Laws 447 and 449. Among other things, Senate Bill No. 752 would amend the medical necessity of any treatment in both sections to be 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.”

This amended definition of medical necessity could be construed as a mandate for new health insurance coverage of specific health services, specific diseases, or certain providers of health care services. However, subsection (d) of each of the two new sections provides, in part:

All health care services related to gender transition treatments shall be considered medically necessary and not cosmetic; provided the policy also provides coverage for those services when the services are offered for purposes other than gender transition (emphasis added), page 4, lines 13-17, and page 9, lines 7-11 of Senate Bill No. 752.

Although Senate Bill No. 752 lists fourteen health services that are to be considered among those health care services related to gender transition treatments, subsection (d) deems those services as being medically necessary only when the policy “provides coverage for those services when the services are offered for purposes other than gender transition.” The effect of subsection (d) is not to mandate specific health services but to prohibit discrimination against persons needing those health services for gender transition if those health services are otherwise covered by the policy when the health services are offered for purposes other than gender transition. As noted in the September 23 informal advice letter, “if a health insurance plan does not already cover ‘Laser hair removal’ services, Senate Bill No. 752 would not mandate the plan to do so for purposes of gender transition.”

As this bill does not require a new health mandate - it prohibits discrimination against persons needing the procedures and the reasons for needing the procedures - it does not trigger the requirement for a “sunrise analysis.”

(2) Why Act 135, Session Law Hawaii 2016, was not considered a health mandate triggering a “sunrise analysis” pursuant to sections 23-51 and -52, Hawaii Revised Statutes.

Act 135, 2016 Haw. Sess. Laws 447, enacted new sections 431-10A-118.3, 432:1-607.3, and 432D-26.3, HRS, that each prohibit discrimination “with respect to participation and coverage under the policy, contract, plan, or agreement against any person on the basis of actual gender identity or perceived gender identity.” Significantly, subsections (b)(4)(A) of the three then new sections included in discrimination the “[d]enying, canceling, or limiting coverage for services on the basis of actual gender identity or perceived gender identity including but not limited to the following: (A) Health care services related to gender transition; provided that there is coverage under the policy, contract, plan, or agreement for the services when the services are not related to gender transition . . .” (emphasis added). See Act 135, 2016 Haw. Sess. Laws 448, 449, and 450.

The Honorable Chris Lee

January 18, 2022

Page 3

The effect of Act 135's three subsections (b)(4)(A) is analogous to the two subsections (d) of Senate Bill No. 752--if certain health care services are covered by the policy, contract, plan, or agreement when the services are not related to gender transition, then it is unlawful to deny coverage for those certain health care services when they are related to gender transition. The effect of the subsections (b)(4)(A) is not to mandate specific health care services but to prohibit discrimination against persons who need those health care services for gender transition if those services are otherwise covered by the policy, contract, plan, or agreement when the health care services are not related to gender transition. As such, the requirement for a "sunrise analysis" is not triggered.

Very truly yours,

Blair Goto

Blair Goto
Deputy Attorney General

APPROVED:



Holly T. Shikada
Attorney General

TO:

RYAN I. YAMANE AND COMMITTEE OF HEALTH, HUMAN SERVICES, AND
HOMELESSNESS

AND

AARON LING JOHANSON AND COMMITTEE OF CONSUMER PROTECTION & COMMERCE

Regarding **HB2405**

*2/15/22 9:00A
329 Via Videoconference*

IN SUPPORT

I am Wendy Taylor, a 15 year resident of Hawaii, and I am in very strong support of the proposed bill.

I am giving my written testimony as such, as well as standing alongside my child, who has been transitioning for six years. We have faced a constant uphill battle for them to live a well adjusted life, as even when new laws come to fruition that are in their favor, they are typically not implemented. Kailey, my 13 year old child, has faced harassment, bullying, and violence from their peers since they began school. They continue to be misgendered, referred to with the wrong name, and left out of activities by staff, teachers, and students at every school they have attended. Kailey is questioning why anyone would oppose this bill because if insurance would allow them transition with ease and at a cost affordable to a single mother, they wouldn't face near as much hardship as they do. The hardest question they have, and I have no answer for them, is: **would insurance rather pay for physical and emotional trauma that WILL continue throughout my whole life than cover necessary measures to prevent that from happening?** As a mother, it breaks my heart that I can't answer this seemingly common sense question and so we will bring it to you. We will keep bringing it to anyone who might have an answer or until Kailey is able to live their life on the outside as they are experiencing themselves on the inside. Please understand that these are procedures that protect lives no matter what you "believe" about other people's gender identity. By invalidated other's internal experience, insurance companies **will** end up paying more for health care costs because of the danger they are putting our gender nonconforming community in. They are responsible.

Again, we stand in **great support of this bill**, as to aid in the physical and emotional protection of our trans and gender nonconforming population.

Wendy Taylor and Kailey Taylor

HB-2405

Submitted on: 2/14/2022 7:18:46 AM

Testimony for HHH on 2/15/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Eileen McKee	Individual	Support	No

Comments:

Aloha,

I support the passage of HB2405.

Mahalo for considering my testimony.

Eileen McKee

Kihei



HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

February 15, 2022
9:00 a.m.
Via Videoconference
Rm. 329

To: The Honorable Ryan I. Yamane, Chair
The Honorable Adrian K. Tam, Vice Chair
Members of the House Committee on Health Human Services & Homelessness

From: Liann Ebesugawa, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: H.B. No. 2405

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

The HCRC supports H.B. No. 2405 which would prohibit health insurance companies from denying coverage on the basis of gender identity if the policy covers the treatment for purposes other than gender transition. The bill further requires insurance companies 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. HCRC supports the rights of the LGBTQ+ community. This bill adds some important safeguards to current law, including a prohibition of denial or cancellation of a policy based on transgender

status, and the right to gender transition treatments. HCRC supports the rights of transgender individuals to access to coverage for gender affirmation.

The HCRC supports H.B. No. 2405, noting two concerns:

1. Adding “transgender” before “person’s” but not before a person’s “family member’s,” could arguably eliminate protection for a person who has a transgender family member (child).

The unintended consequence can be eliminated by adding the changes below in blue.

(b) Discrimination under this section includes the following:

(1) Denying, canceling, limiting, or refusing to issue or renew an insurance policy, contract, plan, or agreement on the basis of a transgender person’s or ~~the~~ a person’s transgender family member’s actual gender identity or perceived gender identity;

(2) Demanding or requiring a payment or premium that is based on a transgender person’s or ~~the~~ a person’s transgender family member’s actual gender identity or perceived gender identity;

(3) Designating a transgender person’s or ~~the~~ a person’s transgender family member’s actual gender identity or perceived gender identity as a preexisting condition to deny, cancel, or limit coverage;

And,

2. Deletion of “neither male nor female” from the definitions of “Actual Gender Identity” and “Perceived Gender Identity” could be interpreted as eliminating or diminishing protection against discrimination for non-binary persons who identify as neither male nor female.

HB-2405

Submitted on: 2/14/2022 9:02:19 AM

Testimony for HHH on 2/15/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Stephanie Mikhail	The Lavender Clinic	Support	No

Comments:

Dear Chair Yamane, Vice-Chair Tam, and Honorable Members,

The Lavender Clinic strongly supports HB2405 which updates the language on the transgender anti-discrimination health insurance law and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary and should be fully covered by patients' insurance. Without insurance coverage of these medically necessary procedures (that are provided for the cisgender people), trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) that ignore the law and medical necessity of gender-affirming care by passing this bill.

When insurance companies categorically deny certain gender-affirming procedures by saying they are cosmetic in their policies, insurers attempt to take themselves out of HRS §432E-1.4(a) (Medical Necessity Statute). The Medical Necessity Statute requires coverage of a procedure if (1) it is not specifically excluded (2) is recommended by a licensed healthcare provider and (3) is medically necessary. Because (1) the anti-discrimination law prohibits insurance companies from categorically excluding surgeries like facial feminization and breast augmentation for transgender people (a protected gender identity) in their policies, (2) licensed doctors are recommending these procedures, and (3) gender-affirming procedures (even those that HMSA and Kaiser have categorically) are supported by the majority of medical opinion, insurance companies are subject to the controlling definition of medical necessity in the HRS 432E.

Our transgender community members deserve healthcare that meets their needs, just like all members of our community. Thank you for investing in the health and safety of our māhū and trans community members!

Sincerely,

Stephanie Mikhail on behalf of The Lavender Clinic



February 11, 2022

The Honorable Ryan I. Yamane, Chair
The Honorable Adrian K. Tam, Vice Chair
House Committee on Health, Human Services, & Homelessness

House Bill 2405 – Relating to Insurance

Dear Chair Yamane, Vice Chair Tam, and Members of the Committee:

The Hawaii Association of Health Plans (HAHP) appreciates the opportunity to provide testimony on HB 2405. HAHP is a statewide partnership of Hawaii’s health plans and affiliated organizations to improve the health of Hawaii’s communities together. The vast majority of Hawaii residents receive their health coverage through a health plan associated with one of our organizations.

HAHP supports the intent of this measure to ensure non-discrimination in coverage based on gender identity and to require clear information about coverage of gender transition services, including the process for appealing a claim denied on the basis of medical necessity. However, we have grave concerns with this measure as written.

HB 2405 mandates health insurance coverage for all health care services related to gender transition including, but not limited to, the procedures outlined in this bill. This mandate for coverage completely circumvents the universal standard of using medical necessity to determine whether a health intervention is appropriate for patients. Medical necessity as defined in HRS432E-1.4 is applied to all our members to ensure a health intervention is appropriate considering potential harms and benefits to the patient; effective in improving health outcomes; and cost-effective for the medical condition being treated, compared to alternative health interventions, based on clinical best practices and scientific evidence. Medical necessity is also a key component in keeping health care affordable and sustainable for everyone.

It should be noted that some of the procedures specified in this measure would be considered cosmetic in nature and are generally not covered for any of our members based on medical necessity. Therefore, as written this measure would create new mandated benefits and we respectfully request that should this measure move forward that the State Auditor first conduct an impact assessment report pursuant to HRS 23-51 and 23-52.

hahp.org | 818 Keeaumoku St., Honolulu, HI 96814 | info@hahp.org



Thank you for allowing us to provide testimony on HB 2405.

Sincerely,

HAHP Public Policy Committee

cc: HAHP Board Members

hahp.org | 818 Keeaumoku St., Honolulu, HI 96814 | info@hahp.org

AlohaCare | HMAA | HMSA | Humana | HWMG | Kaiser Permanente | MDX Hawaii | Ohana Health Plan |
UHA Health Insurance | UnitedHealthcare

HB-2405

Submitted on: 2/15/2022 8:42:23 AM

Testimony for HHH on 2/15/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Michael Golojuch Jr	Stonewall Caucus of the Democratic Party of Hawaii	Support	No

Comments:

Aloha Representatives,

The Stonewall Caucus of the Democratic Party of Hawai'i (formerly the LGBT Caucus) Hawai'i's oldest and largest policy and political LGBTQIA+ focused organization fully supports HB 2405.

We hope you all will support this important piece of legislation.

Mahalo nui loa,

Michael Golojuch, Jr.
Chair and SCC Representative
Stonewall Caucus for the DPH

HB-2405

Submitted on: 2/14/2022 5:20:56 PM

Testimony for HHH on 2/15/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Ashley Galacgac	AF3IRM Hawai'i	Support	No

Comments:

Dear Chair Yamane, Vice-Chair Tam, and Honorable Members,

I strongly support HB2405 which updates the language on the transgender anti-discrimination health insurance law and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary and should be fully covered by patients' insurance. Without insurance coverage of these medically necessary procedures (that are provided for the cisgender people), trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) that ignore the law and medical necessity of gender-affirming care by passing this bill.

When insurance companies categorically deny certain gender-affirming procedures by saying they are cosmetic in their policies, insurers attempt to take themselves out of HRS §432E-1.4(a) (Medical Necessity Statute). The Medical Necessity Statute requires coverage of a procedure if (1) it is not specifically excluded (2) is recommended by a licensed healthcare provider and (3) is medically necessary. Because (1) the anti-discrimination law prohibits insurance companies from categorically excluding surgeries like facial feminization and breast augmentation for transgender people (a protected gender identity) in their policies, (2) licensed doctors are recommending these procedures, and (3) gender-affirming procedures (even those that HMSA and Kaiser have categorically) are supported by the majority of medical opinion, insurance companies are subject to the controlling definition of medical necessity in the HRS 432E.

Our transgender community members deserve healthcare that meets their needs, just like all members of our community. Thank you for investing in the health and safety of our mähū and trans community members!



HIPHI Board

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Michael Robinson, MBA, MA
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Kaiser Permanente

Dina Shek, JD
Medical-Legal Partnership
For Children in Hawai'i

Garret Sugai

Titimaea Ta'ase, JD
State of Hawai'i, Deputy Public Defender

HIPHI Initiatives

Coalition for a
Tobacco-Free Hawai'i

Community Health
Worker Initiative

COVID-19 Response

Hawai'i Drug & Alcohol Free
Coalitions

Hawai'i Farm to School Hui

Hawai'i Oral Health Coalition

Hawai'i Public Health Training Hui

Healthy Eating + Active Living

Kūpuna Food Security Coalition

Date: February 14, 2022

To: Representative Ryan I. Yamane, Chair
Representative Adrian K. Tam, Vice Chair
Members of the Committee on Health

Re: Support HB 2405, Relating to Insurance

Hrg: February 15, 2022 at 9:00 AM via Videoconference

The Hawai'i Public Health Instituteⁱ is in **support of HB 2405**, which clarifies existing state law regarding nondiscrimination in insurance coverage of gender-affirming care.

HIPHI strives to eliminate health disparities and injustices to improve the health and wellness of all people. Gender-affirming care saves lives, and denying access to health care services and treatments on the basis of gender identity runs contrary to public health by perpetuating stigma and exacerbating existing health disparities. For us, eliminating health disparities means moving beyond advocating *for* equity, but rather amplifying our work *against* inequity.

Health insurance denials constitute one of the most oft-cited discriminatory barriers for transgender communities, with one quarter of people identifying as transgender reporting having been denied insurance coverage on the basis of their gender identity.ⁱⁱ Although the nondiscrimination provision of the federal Affordable Care Act and Hawai'i lawⁱⁱⁱ prohibit such denials, local patients report continued denials of insurance coverage for services that otherwise meet the standard of medically necessary care.

Major public health and medical associations recognize the benefits of and support access to gender-affirming care, and have acknowledged the devastating health consequences of discrimination against transgender communities.^{iv} The American Medical Association,^v American Academy of Pediatrics,^{vi} Association of American Medical Colleges,^{vii} American Psychological Association,^{viii} and American Public Health Association,^{ix} support public and private practices and policies that are inclusive of transgender, gender diverse, and nonbinary people.

HB 2405 is a step forward in eliminating barriers to health care for transgender communities in Hawai'i by clarifying that gender-affirming care is medically necessary and therefore must be covered so long as those same services are covered for reasons unrelated to gender affirmation. This will ensure parity in coverage and compliance with

existing law. For these reasons, HIPHI respectfully requests that you support this measure.

Mahalo,



Amanda Fernandes, JD
Policy and Advocacy Director

ⁱ Hawai'i Public Health Institute is a hub for building healthy communities, providing issue-based advocacy, education, and technical assistance through partnerships with government, academia, foundations, business, and community-based organizations.

ⁱⁱ James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality.

ⁱⁱⁱ Hawai'i Revised Statutes §431:10A-118.3.

^{iv} American Medical Association, *Issue Brief: Health insurance coverage for gender-affirming care of transgender patients*, 2019. <https://www.ama-assn.org/system/files/2019-03/transgender-coverage-issue-brief.pdf>.

^v American Medical Association Issue Brief, *supra*; "The AMA opposes the denial of health insurance on the basis of sexual orientation or gender identity." American Medical Association Policy H-180.980. <https://policysearch.ama-assn.org/policyfinder/detail/H-180.980?uri=%2FAMADoc%2FHOD.xml-0-1086.xml>.

^{vi} "Proper gender-affirming care can mitigate a patient's clinical distress and lead to significant improvements in the overall well-being of youth and adolescents who are at risk of or have been diagnosed with gender dysphoria." Brandt et al., v. Rutledge, 4:21-CV-00450-JM, US. District Court Eastern District of Arkansas Central Division, *Amicus Brief of American Academy of Pediatrics*, filed June 23, 2021.

^{vii} "Efforts to restrict the provision of gender-affirming health care for transgender individuals will reduce health care access for transgender Americans, promote discrimination, and widen already significant health inequities." American Association of Medical Colleges Statement on Gender-affirming Health Care for Transgender Youth, April 9, 2021. <https://www.aamc.org/news-insights/press-releases/aamc-statement-gender-affirming-health-care-transgender-youth>.

^{viii} Resolution on Supporting Sexual/Gender Diverse Children and Adolescents in Schools, American Psychological Association, 2020. <https://www.apa.org/pi/lgbt/resources/policy/gender-diverse-children>.

^{ix} "APHA urges Congress, state legislatures, and other public and private entities to ensure that policies and practices across all sectors are explicitly inclusive of transgender and gender-nonconforming people." American Public Health Association, Policy No. 20169, Nov 01, 2016. <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2017/01/26/promoting-transgender-and-gender-minority-health-through-inclusive-policies-and-practices>.

HB-2405

Submitted on: 2/14/2022 9:23:56 AM

Testimony for HHH on 2/15/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Renee Pedersen Rumler	Individual	Support	No

Comments:

Dear Chair Yamane, Vice-Chair Tam, and Honorable Members,

I strongly support HB2405 which updates the language on the transgender anti-discrimination health insurance law and requires insurance companies in Hawai'i to post their policies. There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary and should be fully covered by patients' insurance.

Without insurance coverage of these medically necessary procedures (that are provided for the cisgender people), trans lives are put at risk for depression and suicidal ideation. Please make sure that insurance companies are not ignoring the majority of medical opinion and forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) that ignore the law and medical necessity of gender-affirming care by passing this bill. When insurance companies categorically deny certain gender-affirming procedures by saying they are cosmetic in their policies, insurers attempt to take themselves out of HRS §432E-1.4(a) (Medical Necessity Statute). The Medical Necessity Statute requires coverage of a procedure if (1) it is not specifically excluded (2) is recommended by a licensed healthcare provider and (3) is medically necessary. Because (1) the anti-discrimination law prohibits insurance companies from categorically excluding surgeries like facial feminization and breast augmentation for transgender people (a protected gender identity) in their policies, (2) licensed doctors are recommending these procedures, and (3) gender-affirming procedures (even those that HMSA and Kaiser have categorically) are supported by the majority of medical opinion, insurance companies are subject to the controlling definition of medical necessity in the HRS 432E.

Providing gender affirming services in Hawaii since 2015, I have personally seen the toll lack of access to these services takes on a person who is not cisgender. The additional barriers community members face daily should be reduced by the support of the state and equal treatment with their insurance policies, not reinforced by denial of care and worsening of health outcomes that increase healthcare spending overall. As many states have taken steps to provide this care through requiring all insurances to cover these procedures, including their state Medicaid program, it is critical to the health of this community in Hawaii to have access as a resident of this state. We have seen people die from desperation to receive services that should be covered here and are greatly affected by these policy decisions.

Our transgender community members deserve healthcare that meets their needs, just like all members of our community. Thank you for investing in the health and safety of our māhū and trans community members!

Sincerely,

Renee Pedersen Rumler

HB-2405

Submitted on: 2/14/2022 11:59:41 AM

Testimony for HHH on 2/15/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Shalani Placencia	Individual	Support	No

Comments:

Dear Chair Yamane, Vice-Chair Tam, and Honorable Members,

I strongly support HB2405 which updates the language on the transgender anti-discrimination health insurance law and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary and should be fully covered by patients' insurance. Without insurance coverage of these medically necessary procedures (that are provided for the cisgender people), trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) that ignore the law and medical necessity of gender-affirming care by passing this bill.

When insurance companies categorically deny certain gender-affirming procedures by saying they are cosmetic in their policies, insurers attempt to take themselves out of HRS §432E-1.4(a) (Medical Necessity Statute). The Medical Necessity Statute requires coverage of a procedure if (1) it is not specifically excluded (2) is recommended by a licensed healthcare provider and (3) is medically necessary. Because (1) the anti-discrimination law prohibits insurance companies from categorically excluding surgeries like facial feminization and breast augmentation for transgender people (a protected gender identity) in their policies, (2) licensed doctors are recommending these procedures, and (3) gender-affirming procedures (even those that HMSA and Kaiser have categorically) are supported by the majority of medical opinion, insurance companies are subject to the controlling definition of medical necessity in the HRS 432E.

Our transgender community members deserve healthcare that meets their needs, just like all members of our community. Thank you for investing in the health and safety of our māhū and trans community members!

Sincerely,

Shalani Placencia

HB-2405

Submitted on: 2/14/2022 10:29:13 PM

Testimony for HHH on 2/15/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Nora Pollard	Individual	Support	No

Comments:

Aloha Chair Rep. Ryan Yamane, Vice Chair Rep. Adrian Tam, and the rest of the House Committee on Health, Human Services, and Homelessness.

My name is Nora Pollard and I am giving testimony in support of HB2405. As a transgender woman and one who is a part of our great local trans community, I've been blessed to meet many trans people like myself. Unfortunately, I've also had to see the struggles we face, again and again, especially when it comes to the arena of healthcare.

Although transgender issues have become more mainstream in recent years, there are still struggles to access basic necessities for some community members, especially trans women of color and those who struggle with lack of shelter. It's understood that even if you do find a trans healthcare provider, there's no guarantee that you'll be able to access care easily. Some clinics thankfully work from an informed consent model, while others demand "life experience" or a certain length of therapy before life saving treatment can be given.

Please trust me when I say things like hormone replacement therapy, voice training therapy, hair removal, and surgeries like mastectomies, breast augmentation, and facial feminization surgery are life saving. Without these treatments, trans people face dysphoria without any support and might risk more danger or discomfort than they otherwise would in social settings. Some may be led deep into depression, or face the risk of suicide. For young trans people just discovering themselves and looking to the future, they may find that top surgery (mastectomy or breast augmentation) costs thousands of dollars, and is more of a hurdle to face than a landmark to safely reach, putting them at greater risk. Without the luck of being born rich, some of these options come with a mortgage sized debt, setting trans people further behind their peers in finances in a world where that is already the standard.

Many have already had to pay these prices, but there's no reason to keep that the norm. We should make it so our youth see a bright future in front of them, and feel a world's worth of support in their trans journeys. Personally, I've always hoped to be able to get good insurance and get facial feminization surgery, and it would be nice to be able to save for a place with my girlfriend instead of going into debt over that.

Mahalo for the opportunity to give testimony on this bill. Thank you for your time.

Nora Pollard