ACT 39 H.B. NO. 2405

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act shall be known and cited as the Gender Affirming Treatment Act.

SECTION 2. The legislature finds that many transgender persons have experienced discriminatory treatment from health insurance providers when seeking coverage for gender affirming treatments. Insurance policies often cover therapies and surgeries like feminizing or masculinizing hormone therapies, voice therapies, chest augmentations or reductions, and genital surgeries for other purposes but deny the same treatments for purposes of gender affirmation.

The legislature further finds that these arbitrary assessments of medical necessity are not evidence-based and interfere with the patient-physician relationship. They also place transgender persons who are denied treatment at higher risk of suicide and depression.

The legislature recognizes that, while federal health care guidelines previously prohibited health insurance and health care providers from discriminating on the basis of gender identity, these protections have been largely rolled back.

Accordingly, the purpose of this Act is to:

(1) Prohibit health insurers, mutual benefit societies, and health maintenance organizations from applying categorical cosmetic or blanket exclusions to gender affirming treatments or procedures when determined to be medically necessary pursuant to applicable law;
(2) Specify a process for appealing a claim denied on the basis of medical necessity; and
(3) Require health insurers, mutual benefit societies, and health maintenance organizations 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 3. Section 431:10A-118.3, Hawaii Revised Statutes, is amended to read as follows:

"§431:10A-118.3 Nondiscrimination on the basis of actual gender identity or perceived gender identity; coverage for services. (a) No individual [~~and~~] or group accident and health or sickness 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.

(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

(4) Denying, 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; and

(B) Health care services that are ordinarily or exclusively available to individuals of [~~one~~] any sex.

(c) The medical necessity of any treatment for a transgender person, or any person, on the basis of actual gender identity or perceived gender identity shall be determined pursuant to the insurance policy, contract, plan, or agreement and shall be defined in [~~a manner that is consistent with other covered services.~~] accordance with applicable law. In the event of an appeal of a claim denied on the basis of medical necessity of the treatment, such appeal shall be decided in a manner consistent with applicable law and in consultation with a health care provider with experience in prescribing or delivering gender affirming treatment who shall provide input on the appropriateness of the denial of the claim.

(d) An insurer shall not apply categorical cosmetic or blanket exclusions to gender affirming treatments or procedures, or any combination of services or procedures or revisions to prior treatments, when determined to be medically necessary pursuant to applicable law, only if the policy, contract, plan, or agreement 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:

(1) Hormone therapies;

(2) Hysterectomies;

(3) Mastectomies;

(4) Vocal training;

(5) Feminizing vaginoplasties;

(6) Masculinizing phalloplasties;
(7) Metaoidioplasties;
(8) Breast augmentations;
(9) Masculinizing chest surgeries;
(10) Facial feminization surgeries;
(11) Reduction thyroid chondroplasties;
(12) Voice surgeries and therapies; and
(13) Electrolysis or laser hair removal.

(e) Each individual or group accident and health or sickness policy, contract, plan, or agreement shall provide applicants and policyholders with clear information about the coverage of gender transition services and the requirements for determining medically necessary treatments related to these services, including the process for appealing a claim denied on the basis of medical necessity.

[~~(d)~~] (f) Any coverage provided shall be subject to copayment, deductible, and coinsurance provisions of an individual [~~and~~] or group accident and health or sickness policy, contract, plan, or agreement that are no less favorable than the copayment, deductible, and coinsurance provisions for substantially all other medical services covered by the policy, contract, plan, or agreement.

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

[~~(e)~~] (h) As used in this section unless the context requires otherwise:

"Actual gender identity" means a person's internal sense of being male, female, a gender different from the gender assigned at birth, a transgender person, or neither male nor female.

"Gender transition" means the process of a person changing the person's outward appearance or sex characteristics to accord with the person's actual gender identity.

"Perceived gender identity" means an observer's impression of another person's actual gender identity or the observer's own impression that the person is male, female, a gender different from the gender assigned at birth, a transgender person, or neither male nor female.

"Transgender person" means a person who has [~~gender identity disorder or~~] gender dysphoria, has received health care services related to gender transition, [~~adopts the appearance or behavior of the opposite sex,~~] or otherwise identifies as a gender different from the gender assigned to that person at birth."

SECTION 4. Section 432:1-607.3, Hawaii Revised Statutes, is amended to read as follows:

"§432:1-607.3 Nondiscrimination on the basis of actual gender identity or perceived gender identity; coverage for services. (a) No individual [~~and~~] or group hospital [~~and~~] or 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.

(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

(4) Denying, 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; and

(B) Health care services that are ordinarily or exclusively available to individuals of [~~one~~] any sex.

(c) The medical necessity of any treatment for a transgender person, or any person, on the basis of actual gender identity or perceived gender identity shall be determined pursuant to the [~~insurance~~] hospital or medical service policy, contract, plan, or agreement and shall be defined in [~~a manner that is consistent with other covered services.~~] accordance with applicable law. In the event of an appeal of a claim denied on the basis of medical necessity of the treatment, such appeal shall be decided in a manner consistent with applicable law and in consultation with a health care provider with experience in prescribing or delivering gender affirming treatment who shall provide input on the appropriateness of the denial of the claim.

(d) A mutual benefit society shall not apply categorical cosmetic or blanket exclusions to gender affirming treatments or procedures, or any combination of services or procedures or revisions to prior treatments, when determined to be medically necessary pursuant to applicable law, only if that[1] the policy, contract, plan, or agreement 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:

(1) Hormone therapies;
(2) Hysterectomies;
(3) Mastectomies;
(4) Vocal training;
(5) Feminizing vaginoplasties;
(6) Masculinizing phalloplasties;
(7) Metaoidioplasties;
(8) Breast augmentations;
(9) Masculinizing chest surgeries;
(10) Facial feminization surgeries;
(11) Reduction thyroid chondroplasties;
(12) Voice surgeries and therapies; and
(13) Electrolysis or laser hair removal.

(e) Each individual or group hospital or medical service policy, contract, plan, or agreement shall provide applicants and members with clear information about the coverage of gender transition services and the requirements for determining medically necessary treatments related to these services, including the process for appealing a claim denied on the basis of medical necessity.

[~~(d)~~] (f) Any coverage provided shall be subject to copayment, deductible, and coinsurance provisions of an individual [~~and~~] or group hospital [~~and~~] or medical service policy, contract, plan, or agreement that are no less favorable than the copayment, deductible, and coinsurance provisions for substantially all other medical services covered by the policy, contract, plan, or agreement.

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

[~~(c)~~] (h) As used in this section unless the context requires otherwise:

"Actual gender identity" means a person's internal sense of being male, female, a gender different from the gender assigned at birth, a transgender person, or neither male nor female.

"Gender transition" means the process of a person changing the person's outward appearance or sex characteristics to accord with the person's actual gender identity.

"Perceived gender identity" means an observer's impression of another person's actual gender identity or the observer's own impression that the person is male, female, a gender different from the gender assigned at birth, a transgender person, or neither male nor female.

"Transgender person" means a person who has [~~gender identity disorder or~~] gender dysphoria, has received health care services related to gender transition, [~~adopts the appearance or behavior of the opposite sex,~~] or otherwise identifies as a gender different from the gender assigned to that person at birth."

SECTION 5. Section 432D-26.3, Hawaii Revised Statutes, is amended to read as follows:

"§432D-26.3 Nondiscrimination on the basis of actual gender identity or perceived gender identity; coverage for services. (a) No health maintenance organization policy, contract, plan, or agreement 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.

(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

(4) Denying, 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; and

(B) Health care services that are ordinarily or exclusively available to individuals of [~~one~~] any sex.

(c) The medical necessity of any treatment for a transgender person, or any person, on the basis of actual gender identity or perceived gender identity shall be determined pursuant to the [~~insurance~~] health maintenance organization policy, contract, plan, or agreement and shall be defined in [~~a manner that is consistent with other covered services.~~] accordance with applicable law. In the event of an appeal of a claim denied on the basis of medical necessity of the treatment, such appeal shall be decided in a manner consistent with applicable law and in consultation with a health care provider with experience in prescribing or delivering gender affirming treatment who shall provide input on the appropriateness of the denial of the claim.

(d) A health maintenance organization shall not apply categorical cosmetic or blanket exclusions to gender affirming treatments or procedures, or any combination of services or procedures or revisions to prior treatments, when determined to be medically necessary pursuant to applicable law, only if the policy, contract, plan, or agreement 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:

(1) Hormone therapies;
(2) Hysterectomies;
(3) Mastectomies;
(4) Vocal training;
(5) Feminizing vaginoplasties;
(6) Masculinizing phalloplasties;
(7) Metaoidioplasties;
(8) Breast augmentations;
(9) Masculinizing chest surgeries;
(10) Facial feminization surgeries;
(11) Reduction thyroid chondroplasties;
(12) Voice surgeries and therapies; and
(13) Electrolysis or laser hair removal.

(e) Each health maintenance organization policy, contract, plan, or agreement shall provide applicants and subscribers with clear information about the coverage of gender transition services and the requirements for determining medically necessary treatments related to these services, including the process for appealing a claim denied on the basis of medical necessity.

[~~(d)~~] (f) Any coverage provided shall be subject to copayment, deductible, and coinsurance provisions of a health maintenance organization policy, contract, plan, or agreement that are no less favorable than the copayment, deductible, and coinsurance provisions for substantially all other medical services covered by the policy, contract, plan, or agreement.

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

[~~(e)~~] (h) As used in this section unless the context requires otherwise:

"Actual gender identity" means a person's internal sense of being male, female, a gender different from the gender assigned at birth, a transgender person, or neither male nor female.

"Gender transition" means the process of a person changing the person's outward appearance or sex characteristics to accord with the person's actual gender identity.

"Perceived gender identity" means an observer's impression of another person's actual gender identity or the observer's own impression that the person is male, female, a gender different from the gender assigned at birth, a transgender person, or neither male nor female.

"Transgender person" means a person who has [~~gender identity disorder or~~] gender dysphoria, has received health care services related to gender transition, [~~adopts the appearance or behavior of the opposite sex,~~] or otherwise identifies as a gender different from the gender assigned to that person at birth."

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 16, 2022.)

Note

1. So in original.