

HOUSE BILL REPORT

SHB 2338

As Passed Legislature

Title: An act relating to prohibiting discrimination in health care coverage.

Brief Description: Prohibiting discrimination in health care coverage.

Sponsors: House Committee on Health Care & Wellness (originally sponsored by Representatives Macri, Thai, Wylie, Doglio, Cody and Pollet).

Brief History:

Committee Activity:

Health Care & Wellness: 1/22/20, 1/31/20 [DPS];

Appropriations: 2/8/20, 2/10/20 [DPS(HCW)].

Floor Activity:

Passed House: 2/17/20, 93-5.

Passed Senate: 3/6/20, 30-18.

Passed Legislature.

Brief Summary of Substitute Bill

- Expands health coverage mental health parity requirements.
- Expands health insurance nondiscrimination provisions.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Cody, Chair; Macri, Vice Chair; Schmick, Ranking Minority Member; Chambers, Chopp, Davis, DeBolt, Harris, Maycumber, Riccelli, Robinson, Stonier, Thai and Tharinger.

Staff: Jim Morishima (786-7191).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Health Care & Wellness be substituted therefor and the substitute bill do pass. Signed by 30 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Stokesbary, Ranking

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chopp, Cody, Corry, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Kilduff, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Schmick, Senn, Springer, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

Minority Report: Do not pass. Signed by 2 members: Representatives Chandler and Kraft.

Staff: David Pringle (786-7310).

Background:

I. Mental Health Parity.

State and federal law require health insurers to provide coverage for mental health services on the same terms that medical and surgical benefits are covered. Federal mental health parity requirements apply to the Medicaid program and almost all health insurers. State mental health parity requirements apply to state regulated health carriers, health coverage provided to public employees, health coverage offered by the Washington State Health Insurance Pool, and the Basic Health Plan (which is no longer operating).

State law excludes several categories of services from the definition of "mental health services," including, "life transition problems," substance use disorders, skilled nursing facility services, home health care, residential treatment, custodial care, and court-ordered treatment that is not medically necessary.

Health plans deemed by the Insurance Commissioner to have a limited purpose or duration and student-only plans offered to students of institutions of higher education are exempt from some state insurance mandates, including mental health parity requirements.

II. Health Insurance Nondiscrimination.

A. Federal Law.

Section 1557 of the federal Patient Protection and Affordable Care Act (ACA) prohibits discrimination on the basis of race, color, national origin, sex, age, or disabilities in health programs receiving federal funding, health programs administered directly by the federal government, and qualified health plans offered on health benefit exchanges. Federal rules implementing this requirement prohibit discrimination in: (1) the issuance of health plans, (2) the denial or limitation of coverage, and (3) marketing practices. The rules also prohibit discrimination against transgender individuals and prohibit insurers from categorically excluding gender transition services.

In 2016 a federal district court issued a nationwide injunction enjoining the enforcement of the federal rules prohibiting discrimination on the basis of gender identity or termination of pregnancy. *Franciscan Alliance, Inc. v. Burwell*, 227 F.Supp. 3d 660, (2016). The court subsequently stayed its ruling and in 2019 the United States Department of Health and Human Services (HHS) proposed rules clarifying the scope of the ACA's nondiscrimination

provisions. These rules have not yet been adopted. In the meantime, the HHS is enforcing its rules consistent with the court's decision in *Burwell*.

B. State Law.

A number of state prohibitions against discrimination apply to health insurers. For example, state law prohibits discrimination in insurance transactions based on sex, marital status, sexual orientation, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal. Health care service contractors are prohibited from discriminating on the basis of race, religion, national origin, or the presence of any sensory, mental, or physical handicap. Health maintenance organizations are prohibited from discriminating on the basis of any sensory, mental, or physical handicap. This does not prohibit a health care service contractor or health maintenance organization from limiting or denying coverage when a person does not meet essential eligibility requirements because of a medical condition.

In addition, state law prohibits a health carrier offering a non-grandfathered health plan in the individual or small group market from discriminating against individuals because of age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions. Such a health carrier may not, with respect to the health plan, discriminate on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation. This prohibition does not prevent a health carrier from appropriately using reasonable medical management techniques.

Summary of Substitute Bill:

I. Mental Health Parity.

For coverage issued or renewed on or after January 1, 2021, the following exemptions from the definition of "mental health treatment" are eliminated: "life transition problems," substance use disorders, skilled nursing facility services, home health care, residential treatment, custodial care, and court-ordered treatment. For such coverage, mental health treatment includes medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the Diagnostic and Statistical Manual of Mental Health and Substance Use Disorders.

Short-term limited purpose or duration health plans are made subject to the mental health parity requirements applicable to disability insurers, health care service contractors, and health maintenance organizations. Student-only health plans offered to students in institutions of higher education are made subject to the mental health parity requirements applicable to disability contractors.

II. Health Insurance Nondiscrimination.

The discrimination prohibitions applicable to non-grandfathered health plans in the individual and small group markets are made applicable to:

- all non-grandfathered health plans (i.e., health plans in the large group, small group, and individual markets);

- short-term limited purpose or duration health plans; and
- student-only health plans offered to students in institutions of higher education.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Health Care & Wellness):

(In support) Both the state and federal governments have mental health parity laws, but the federal government has stronger protections. This bill puts Washington into alignment with federal law. This bill closes a loophole in the law by providing coverage to people living with substance use disorders, mental health conditions, and gender-related conditions. The bill also ensures that the state's nondiscrimination provisions apply to all state-regulated health plans, which will ensure uniformity regardless of a health plan's duration or where it was obtained. This is especially important because the federal government is considering rolling back some of these protections, which will expose the deficiencies in Washington's mental health parity laws.

Transgender individuals have historically faced discrimination by insurers, which commonly excluded transition services in the past. Transgender individuals are sometimes denied coverage for routine services such as allergy tests and broken bones. As a result, transgender individuals often feel that there is not much for them in health insurance. Access to health care is a key component to life. This bill will help address this issue and clarify that Washington stands for nondiscrimination. Health coverage that is free from discrimination gives hope to marginalized communities.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) The staff at the Office of the Insurance Commissioner (OIC) spent the legislative interim looking at OIC statutes to reduce discrimination. This bill affects the commercial insurance market, and the OIC recommends it to the Appropriations Committee.

(Opposed) None.

Persons Testifying (Health Care & Wellness): Representative Macri, prime sponsor; Tobi Hill-Meyer, Gender Justice League; Carey Morris, Equal Rights Washington; and Lonnie Johns-Brown, Office of the Insurance Commissioner.

Persons Testifying (Appropriations): Lonnie Johns-Brown, Office of the Insurance Commissioner.

Persons Signed In To Testify But Not Testifying (Health Care & Wellness): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.