

# HOUSE BILL REPORT

## 2SSB 5602

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### As Passed House - Amended:

April 25, 2019

**Title:** An act relating to eliminating barriers to reproductive health care for all.

**Brief Description:** Eliminating barriers to reproductive health care for all.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Randall, Wilson, C., Nguyen, Das, Saldaña, Cleveland, Takko, Kuderer, Hasegawa, Rolfes, Van De Wege, Keiser, Hunt, Wellman, Billig, Dhingra, Conway, Pedersen, Frockt, Salomon, Palumbo, Darneille, McCoy, Lias, Mullet and Carlyle).

### Brief History:

#### Committee Activity:

Health Care & Wellness: 3/20/19, 4/2/19 [DPA];

Appropriations: 4/6/19, 4/8/19 [DPA(APP w/o HCW)].

#### Floor Activity:

Passed House - Amended: 4/25/19, 58-40.

### Brief Summary of Second Substitute Bill (As Amended by House)

- Prohibits the Health Care Authority, Medicaid managed care plans, health plans, and student health plans from automatically denying coverage for reproductive health care services that are ordinarily or exclusively available to individuals of one gender based on the fact that the individual's gender assigned at birth, gender identity, or gender recorded in government documents is different from the gender for which the services are ordinarily or exclusively available.
- Requires that health plans and student health plans provide coverage for condoms, screening and services for health needs arising from a sexual assault, well-person preventive visits, prenatal vitamins, and breast pumps.
- Requires health carriers offering qualified health plans to bill enrollees through a single invoice.
- Requires hospitals to submit policies to the Department of Health related to access to care regarding admissions, nondiscrimination, and reproductive health care.

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*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.*

- Directs the Bree Collaborative to identify, define, and endorse guidelines for the provision of high quality sexual and reproductive health services, including recommendations for care for people of color, immigrants and refugees, victims and survivors of violence, and people with disabilities.

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## HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

**Majority Report:** Do pass as amended. Signed by 9 members: Representatives Cody, Chair; Macri, Vice Chair; Davis, Jinkins, Riccelli, Robinson, Stonier, Thai and Tharinger.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Chambers.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Harris.

**Staff:** Chris Blake (786-7392).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass as amended by Committee on Appropriations and without amendment by Committee on Health Care & Wellness. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Jinkins, Macri, Pettigrew, Pollet, Ryu, Senn, Springer, Stanford, Sullivan, Tarleton and Tharinger.

**Minority Report:** Do not pass. Signed by 13 members: Representatives Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Dye, Hoff, Kraft, Mosbrucker, Schmick, Steele, Sutherland and Ybarra.

**Staff:** Catrina Lucero (786-7192).

### **Background:**

#### Coverage Requirements for Preventive Services.

The federal Patient Protection and Affordable Care Act requires health plans to cover the following preventive services with no cost sharing:

- items or services with an "A" or "B" rating from the United States Preventive Services Task Force;
- immunizations recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention;
- preventive care and screenings for children recommended by the United States Health Resources and Services Administration's (HRSA) Bright Futures Project; and
- additional services supported by the HRSA.

#### Billing for Qualified Health Plans.

State-regulated health plans that provide coverage for maternity care or services, must also provide substantially equivalent coverage to permit the voluntary termination of a pregnancy. The plans may not limit a woman's access to services related to the voluntary termination of a pregnancy, except for generally applicable terms and conditions, including cost-sharing. Health plans are not required to cover abortions that would be illegal under state law.

Under the federal Patient Protection and Affordable Care Act (ACA), any health plan offered on the Health Benefit Exchange that covers abortions must collect two separate payments, one for the abortion services and one for all other benefits. A plan that covers abortions must segregate the funds attributable to the abortion benefit in a separate account. The actuarial value of the abortion benefit must be at least \$1 per month and may not take into account any savings that may accrue due to an abortion.

Generally, the ACA preempts state laws that prevent its application. The ACA, however, does not preempt or affect state laws regarding the prohibition or requirement of coverage, funding, or procedural requirements on abortion.

Rules proposed in 2018 by the United States Department of Health and Human Services, if enacted, would require qualified health plans to send two separate monthly bills to enrollees, one for premiums attributable to abortion coverage and one for premiums attributable to all other coverage. Enrollees would be instructed to pay each bill separately, but the qualified health plan may not terminate coverage if the enrollee pays both bills together.

#### Discrimination in Health Insurance.

The Washington Law Against Discrimination (WLAD) provides a person has the right to be free from discrimination based on race, creed, color, national origin, sex, marital or family status, age, disability, or the use of a trained dog guide. This right applies to public accommodation, employment, real estate transactions, credit and insurance transactions, and commerce. The Washington State Human Rights Commission (HRC) is responsible, in part, for administering and enforcing the WLAD.

Health service contractors are further prohibited from denying coverage to a person on the basis of race, religion, national origin, or the presence of a sensory, mental, or physical disability, unless the denial or limitation of coverage relates to a medical condition that does not meet coverage requirements. In addition, insurers may not refuse to issue, or cancel or decline to renew, a contract because of a person's sex, marital status, sexual orientation, or the presence of a sensory, mental, or physical condition.

#### Hospital Access to Care Policies.

Governor Inslee's Directive 13-12 directed the Department of Health (Department) to adopt rules improving transparency for consumer information, by requiring hospitals supply non-discrimination, end of life care, and reproductive health care policies, which consumers must have access to on the Department's webpage. The Department rules require every hospital to submit to the Department its policies related to access to care regarding admission, nondiscrimination, end-of-life care, and reproductive health care.

These policies must be posted on the hospitals and the Department's websites. If a hospital makes changes or additions to any of the policies, it must submit a copy of the new policy to the Department within 30 days after the hospital approves the changes or additions.

### **Summary of Bill:**

#### Non Discrimination.

In Medical Assistance programs, the Health Care Authority (Authority), Medicaid managed care organizations, and health care providers are prohibited from discriminating in the delivery of reproductive health care services based on the covered person's gender identity or expression. The Authority, Medicaid managed care organizations, health plans, and student health plans are prohibited from automatically denying coverage for reproductive health care services that are ordinarily or exclusively available to individuals of one gender based on the fact that the individual's gender assigned at birth, gender identity, or gender recorded in government documents is different from the gender for which the services are ordinarily or exclusively available. Such denials are prohibited discrimination under Washington's Law Against Discrimination. The term "reproductive health care services" is defined as medical services or treatments, including pharmaceutical and preventative care, directly involved in the reproductive system and its processes, functions, systems, and organs involved in reproduction, in all stages of life. The term does not include infertility treatment.

#### Health Plan Coverage.

Student health plans must meet the same requirements that apply to health plans to cover all contraceptive drugs, devices, and other products; voluntary sterilization procedures; and the consultations, examinations, procedures, and medical services related to the use of contraceptive or sterilization drugs, devices, and other products or services. The requirements apply to student health plans that have been deemed by the Insurance Commissioner to have a short-term limited purpose or duration or to be guaranteed renewable while the covered person is enrolled as a full-time student at an accredited higher education institution.

For health plans and student health plans issued or renewed on or after January 1, 2021, coverage must be provided for:

- condoms, regardless of the gender or sexual orientation of the covered person;
- screening for physical, mental, sexual, and reproductive health care needs that arise from a sexual assault;
- medically necessary services and prescription medications for the treatment of physical, mental, sexual, and reproductive care needs that arise from a sexual assault;
- well-person preventive visits, defined as preventive annual visits recommended by the federal Health Resources and Services Administration Women's Preventive Services Guidelines;
- reproductive health-related over-the-counter prenatal vitamins for pregnant persons; and
- reproductive health-related over-the-counter breast pumps for covered persons expecting the birth or adoption of a child.

The term "reproductive health care services" is defined as medical services or treatments, including pharmaceutical and preventative care, directly involved in the reproductive system

and its processes, functions, systems, and organs involved in reproduction, in all stages of life. The term does not include infertility treatment.

The benefits must be provided without requirements for copayments, deductibles, or other forms of cost sharing, except for: (1) medically necessary services and prescriptions related to treatment of physical, mental, sexual, and reproductive care needs that arise from a sexual assault; and (2) prenatal vitamins and breast pumps.

#### Billing for Qualified Health Plans.

In accordance with state requirements for coverage and funding of abortion services, a health carrier offering a qualified health plan must bill enrollees and collect payment through a single invoice that includes all benefits and services covered by the qualified health plan. The health carrier must include in its segregation plan a certification that the health carrier's billing and payment processes meet these requirements.

#### Legislative Findings and Declarations.

Legislative findings and declarations are made related to state policy regarding reproductive health care and coverage, barriers to accessing reproductive health care faced by different populations, federal prohibitions against certain immigrants receiving health benefits through federally-funded programs and the negative effects on their health, the unmet reproductive health care needs of transgender and gender nonconforming persons due to stigma, the number of transgender people who did not see a doctor because of affordability, the need for coverage and timely access to reproductive health care, and the need to prohibit discrimination in health care services and health plan coverage for reproductive health care services.

#### Hospital Access to Care Policies.

By September 1, 2019, every hospital must submit to the Department of Health (Department) its policies related to access to care regarding admission, nondiscrimination, and reproductive health care. If a hospital makes any changes to the policies, it must submit an updated copy to the Department within 30 days of the change.

By September 1, 2019, the Department, in consultation with a hospital association and patient advocacy groups must develop a simple and clear form to be used by hospitals to submit the access to care policies. The form must provide the public with specific information about which reproductive health care services are and are not performed at each hospital. The form must include contact information for the hospital in case patients have specific questions about services available at the hospital. Submitted policies and the form must be posted on the Department and the hospital's website.

#### Sexual and Reproductive Health Services Guidelines.

The Bree Collaborative must identify, define, and endorse guidelines for the provision of high quality sexual and reproductive health services in all settings. The Bree Collaborative must develop specific clinical recommendations to improve sexual and reproductive health care for people of color, immigrants and refugees, victims and survivors of violence, and people with disabilities. The Bree Collaborative must provide a status report to the legislative committees with jurisdiction over health care and to the Governor by December 1, 2020.

Financial Support for Pre-Exposure and Post Exposure Prophylaxis.

The Department must consult with other state agencies and develop recommendations for increasing awareness about financial support that is available for pre-exposure and postexposure prophylaxis. The Department must report its recommendations to the appropriate committees of the legislature by December 1, 2019.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after the adjournment of the session in which the bill is passed, except for section 2, relating to prohibiting discrimination in Medical Assistance programs, which takes effect January 1, 2020, section 3, relating to health insurance coverage requirements, which takes effect on January 1, 2021, and section 4, relating to billing for qualified health plans, which contains an emergency clause and takes effect immediately. However, the bill is null and void unless funded in the budget.

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

(In support) Reproductive health care is about economic justice and economic power and ensuring that people are able to get the preventive care that they need before their care needs escalate. There are still barriers to health care for immigrants, students, transgender, and nonconforming communities that are hardest hit by economic inequality and are under attack from their communities. This bill will cover a significant portion of the population that faces the largest disparities in access to birth control, cancer screening, and sexually-transmitted infection testing. This bill will allow clinicians to provide all appropriate care options rather than limiting care options to what a patient may be able to afford.

This bill strengthens anti-discrimination provisions for transgender and nonconforming individuals in medical assistance programs and private insurance. This bill explicitly prohibits insurance claim denials based upon a person's gender identity or expression. Access to health services is limited for transgender people because of mistreatment, stigma, and insensitivity encountered when seeking health care services. Insurers have denied coverage for routine health care visits to transgender people. This bill will ensure that no matter what stage of gender transition a person is in, that person would be able to receive reproductive health care. For communities that face additional barriers, like immigrant communities and the transgender community, burdensome costs and dehumanizing insurance processes can make accessing the full spectrum of care nearly impossible. All Washingtonians, regardless of their immigration status or gender identity, need a guarantee of access to comprehensive, affordable reproductive health care free from discrimination.

Adolescents and young adults account for a disproportionate number of unintended pregnancies and cases of sexually transmitted infections. This bill assures that people who have student health insurance have access to reproductive health services equivalent to those with private insurance coverage. Cost-sharing and utilization management can be barriers for students seeking immediate care. This bill extends important protections to college students who experience sexual assault.

Immigrants are less likely to have health insurance and receive preventive care and more likely to delay seeking health care services. Immigrants are more likely to have poor reproductive health outcomes, such as unintended pregnancies, sexually-transmitted infections, and adverse birth outcomes. This bill requires that reproductive health care services be made equally available to adult immigrants who do not have access to affordable coverage options and are ineligible for Medical Assistance. Currently, there is no program to assure access to reproductive health care services for undocumented immigrants over 19 years old.

Reproductive health care is economically smart and true to Washington's values. This bill makes fiscal sense since the cost of family planning services is much less than the cost of pregnancy-related care.

(Opposed) This bill attacks religious liberties because many health plans are carried by private schools which are schools of faith and they will have to choose between continuing this coverage, dropping coverage, or filing a lawsuit. This bill violates the religious liberties of taxpayers who do not believe in the killing of children in the womb. This is forcing parents and business owners to pay for moral issues that are against their conscience. This bill will require insurance coverage for Plan B and Ella for students and their partners, as well as cross-sex hormones, gender transition surgery, and other transition-related health care services. This bill will expand access to abortions, including through student health plans, by increasing access to contraceptives that includes the four abortifacients approved by the federal Food and Drug Administration.

Outcomes are better when parents are involved in children's decision making. Parental rights are crucial as to how children are raised. It does not make sense to send children to schools for abortion, sex change, and gender counseling without parental knowledge or consent and making the parents pay for it. Transitioning children with gender dysphoria is a new and untested approach to treatment.

Any legislation that endorses the idea that transitioning is the only or best option for those suffering from gender dysphoria is harmful. Gender dysphoria is a mental health issue. Because this bill is based on the gender identity and expression of the patient, not the biological reality, it sets up a situation in which a biological man can go to an obstetrician and ask for an intrauterine device and claim discrimination if he is denied.

This bill is paying for illegal aliens who have already broken the law to participate in this health care program.

#### **Staff Summary of Public Testimony (Appropriations):**

(In support) The greatest barriers to accessing reproductive health care are cost and bureaucracy. Working people, transgender people, and immigrants are disproportionately impacted by these barriers. This bill fills gaps in current law to ensure that all residents have access to reproductive health care. Immigrants and undocumented workers face health disparities that lead to higher rates of maternal mortality and low birthweight infants.

Increased access to family planning for this community would help address these issues. Immigration status should not affect a person's ability to access healthcare

(Opposed) None.

**Persons Testifying** (Health Care & Wellness): (In support) Senator Randall, prime sponsor; Huma Zarif, Northwest Health Law Advocates; Lili Navarette, Planned Parenthood of Greater Washington and North Idaho; Matt Goldenburg; and Morgan Steele Dykeman, NARAL Pro-Choice Washington.

(Opposed) Christopher Plante, Family Policy Institute of Washington; Beth Daranciang; and Georgene Faries.

**Persons Testifying** (Appropriations): Steele Dykeman, National Abortion and Reproductive Rights Action League Pro-Choice Washington.

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

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