

# SENATE BILL REPORT

## 2SSB 5602

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As Amended by House, April 16, 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 & Long Term Care: 2/15/19, 2/22/19 [DPS-WM, w/oRec, DNP].

Ways & Means: 2/27/19, 2/28/19 [DP2S, w/oRec, DNP].

**Floor Activity:**

Passed Senate: 3/07/19, 28-17.

Passed House: 4/16/19, 59-39.

**Brief Summary of Second Substitute Bill**

- Directs the Health Care Authority to administer a family planning program for individuals over nineteen years of age who would be eligible for the Take Charge Program if not for immigration status.
- Prohibits discrimination in the provision of certain reproductive health care services on the basis of gender identity or expression.
- Requires health plans and student health plans to provide coverage for certain reproductive treatments and services.

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### SENATE COMMITTEE ON HEALTH & LONG TERM CARE

**Majority Report:** That Substitute Senate Bill No. 5602 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Cleveland, Chair; Randall, Vice Chair; Conway, Dhingra, Frockt, Keiser and Van De Wege.

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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.*

**Minority Report:** That it be referred without recommendation.

Signed by Senator Rivers.

**Minority Report:** Do not pass.

Signed by Senators O'Ban, Ranking Member; Bailey and Becker.

**Staff:** Evan Klein (786-7483)

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## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5602 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo, Pedersen and Van De Wege.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Rivers.

**Minority Report:** Do not pass.

Signed by Senators Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Bailey, Becker, Schoesler, Wagoner, Warnick and Wilson, L..

**Staff:** Sandy Stith (786-7710)

**Background:** Federal Benefits Eligibility. Under federal law, aliens who are not qualified aliens are not eligible for most federal public benefits, including Medicaid. Qualified aliens may be eligible for federal public benefits if they meet certain exemptions, including refugee status, certain permanent residency statuses, veteran and active duty military status, disabled aliens who have resided in the United States since 1996, and certain American Indians.

Take Charge, Family Planning Waiver Program. The Health Care Authority (HCA) operates the Take Charge Program (Take Charge) to provide men and women coverage for family planning services, which includes U.S. Food and Drug Administration (FDA) approved contraception, screening for sexually transmitted diseases (STDs), well-woman care, and family planning education. Anyone, except undocumented immigrants and non-qualified aliens, who is uninsured, not eligible for Medicaid or insured and seeking confidential family planning services, and is at or below 260 percent of the federal poverty level is eligible for Take Charge.

Insurance Coverage for Reproductive Care. The ACA requires non-grandfathered, individual and small group market health plans to offer the essential health benefits. The essential health benefits are established by the states using a supplemented benchmark plan. Prescription drugs, including all FDA-approved contraceptive methods and prescription-based sterilization procedures for women, are included in Washington's essential health benefits package.

Rules adopted by the Office of the Insurance Commissioner (OIC) require a state-regulated health plan to cover prescription contraceptives if it provides generally comprehensive coverage of prescription drugs. This requirement applies to all state-regulated health plans, regardless of whether they are subject to the essential health benefits requirement.

In 2018, the Legislature required all health plans issued or renewed on or after January 1, 2019 to provide coverage for all contraceptive drugs, devices, and other products approved by the FDA. The coverage may not require copays, deductibles, or other forms of cost sharing. The Legislature also directed the Governor's Interagency Coordinating Council on Health Disparities to do a literature review on disparities in access to reproductive health care. The report included recommendations for improving health care access and reducing inequities based on socioeconomic, race, sexual orientation, gender identity, ethnicity, and geographic factors.

Human Rights Commission. 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 WLAD.

HRC investigates complaints alleging unfair practices. If there is reasonable cause to believe an unfair practice is occurring, or has occurred, the HRC must act to eliminate the unfair practice through conference, conciliation, and persuasion. If no agreement is reached, HRC requests the appointment of an administrative law judge (ALJ). An ALJ is empowered to award damages, require the wrongful act cease and desist, and to order any other affirmative action to effectuate the purposes of the law.

**Summary of Second Substitute Bill:** Beginning in 2020, HCA must administer a family planning program for individuals over nineteen years of age who would be eligible for Take Charge if not for their immigration status. The program must provide services identical to Take Charge. HCA must establish an education and outreach campaign to provide culturally and linguistically accessible information to facilitate participation in the program.

The provision of reproductive health care services by the HCA, managed care plans (MCOs), and providers that deliver or administer services purchased or contracted for by HCA, must not discriminate in the delivery of a service based on the covered person's gender identity or expression.

Beginning in 2021, health plans and student health plans must provide coverage for:

- condoms, regardless of the gender or sexual orientation of the covered person, and regardless of whether they are to be used for contraception or specifically to prevent a sexually transmitted disease;
- screening following a sexual assault;
- well-person preventive visits;
- medically necessary services and prescription medications for the treatment of physical, mental, sexual, and reproductive health care needs that arise from a sexual assault; and

- prenatal vitamins for pregnant persons and breast pumps for covered persons expecting the birth or adoption of a child.

Health plans and student health plans are prohibited from requiring any cost-sharing for the required covered services, drugs, devices, and products, except treatment for physical, mental, sexual, and reproductive health following a sexual assault, and prenatal vitamins for pregnant women and breast pumps for covered persons expecting the birth or adoption of a child may include cost sharing. Health plans and student health plans may require cost-sharing if the health plan is a qualifying health plan for a health savings account.

Health plans are permitted to require a prescription to trigger coverage of prenatal vitamins for pregnant women and breast pumps for covered persons expecting the birth or adoption of a child.

HCA, MCOs, health plans, and student health plans may not use automatic initial denials of coverage for reproductive health services ordinarily available to individuals of one gender, based on the fact the individual's gender assigned at birth, gender identity, or gender otherwise recorded in one or more government-issued documents, is different from the one to which such health services are ordinarily available. Prohibited denials are considered prohibited discrimination under WLAD.

**Appropriation:** None.

**Fiscal Note:** Requested on January 29, 2019.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony on First Substitute (Health & Long Term Care):**

PRO: Washington has been leading the nation on reproductive freedom, including providing increased coverage for contraception in 2018. However, there are still gaps for immigrants, transgender communities, and young adults. Immigrants are more likely to experience poor reproductive health outcomes. The transgender population is less likely to have health insurance, and their access to health care is further limited by stigma. This bill allows individuals to access Take Charge who otherwise cannot because of their immigration status. This bill prohibits discrimination based on gender identity. Preventative reproductive health services are good for the people accessing them, but also good for the economy of the state. This bill also corrects that RPA by explicitly including student health plans. This bill strengthens existing federal and state protections, to ensure that vulnerable populations no longer experience certain barriers to accessing reproductive services. This bill is one step towards attaining reproductive health equity. Transgender discrimination has a long history, and regardless of current protections, insurance companies have still denied medically necessary care to transgender individuals. Individuals are born transgender, and have to battle for equality in the rest of their lives. They should not have battle for equality in their health care. Currently, insurers can initially or automatically deny a service based on someone's gender, and if they later pay for the care, would meet the burden under the current gender discrimination provisions in law. This bill would prohibit initial denials, so that

transgender individuals are not required to go through appeals to get services covered. The real cost of not insuring individuals is far higher than paying for coverage, due to the increased burden that gets placed on individuals who are denied services.

CON: Last year, there was a measure that would have provided tax payer funded abortions to immigrants. This present bill is not as clear, and while there is no reference to abortion in this bill, omission of the critical fact that this bill includes expanded access to abortions is important. Washington should promote healthy families and life.

**Persons Testifying (Health & Long Term Care):** PRO: Senator Emily Randall, Prime Sponsor; Kim Clark, Legal Voice; Tobi Hill-Meyer, Gender Justice League; Kole Sanders, NARAL Pro-Choice Washington; Huma Zarif, Northwest Health Law Advocates; Lonnie Johns-Brown, Office of the Insurance Commissioner; Lucas Leek, Transgender Health and Community Center; Sarah Dixit, Public Affairs Community Organizer; Flora Benson, citizen; Elayne Wylie, Gender Justice League.

CON: Theresa Schrempp, citizen.

**Persons Signed In To Testify But Not Testifying (Health & Long Term Care):** No one.

**Staff Summary of Public Testimony on First Substitute (Ways & Means):** *The committee recommended a different version of the bill than what was heard.* PRO: Our state has a long history of supporting the reproductive rights of every Washingtonian, but for other citizens facing additional barriers, such as immigrants or trans folks, burdensome costs and dehumanizing insurance processes can making accessing the full spectrum of care nearly impossible. This bill creates a necessary state funded program to cover comprehensive reproductive health care for some immigrants who cannot access reproductive healthcare through state programs due to federal restrictions. We expect this to pay off in the long run through better birth outcomes and healthier babies. All Washingtonians, especially those who can become pregnant, need access to affordable reproductive healthcare, free from discrimination. Not only is this the right thing to do, it makes good financial sense. The creation of a Take Charge look-alike program would require an upfront investment. This would create savings over time. Immigrants contribute to our communities. They work and they pay taxes. Denying them family planning harms not only them, but our communities.

**Persons Testifying (Ways & Means):** PRO: Kim Clark, Senior Attorney, Legal Voice; Morgan Steele Dykeman, Legislative Affairs Manager, NARAL Pro-Choice Washington.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.

#### **EFFECT OF HOUSE AMENDMENT(S):**

- Removes the requirement that the HCA establish a family planning and related service program, similar to the take charge program, for persons over 19 years old, who would be eligible for family planning services under Medicaid except for the person's status as an undocumented or nonqualified resident.
- Removes the requirement that medical assistance and state and school employee health plans cover screening for gonorrhea, chlamydia, syphilis, and human immunodeficiency

virus, pre-exposure prophylaxis, post-exposure prophylaxis, and condoms at no cost-sharing to the client.

- Requires health carriers offering a qualified health plan to bill enrollees and collect payment through a single invoice that includes all benefits and services covered by the qualified health plan.
- Requires that the segregation plans of health carriers include a certification that the health carrier's billing and payment processes meet the OIC requirements for the segregation of premiums.
- Changes the term "body parts" to "reproductive system" and eliminates the endocrine system from the definition.
- Specifies that the term "reproductive health care services" includes medical services, rather than only medical treatments, which include preventive care services and treatments.
- Specifies that the term "reproductive health care services" does not include infertility treatment.
- Specifies that the term "well-person preventive visits" applies to women and, when medically appropriate, to transgender, nonbinary, and intersex individuals.
- Removes the requirement that health plans and student health plans cover: (1) screening for gonorrhea, chlamydia, syphilis, and human immunodeficiency virus; and (2) pre-exposure prophylaxis and postexposure prophylaxis.
- Corrects the statutory location of provisions related to the public employees' benefits board and school employees' benefits board.
- Adds a null and void clause.