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**SECOND SUBSTITUTE SENATE BILL 5313**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Lias, Randall, Darneille, Das, Dhingra, Frockt, Hunt, Keiser, Kuderer, Lovelett, Nguyen, Nobles, Pedersen, Robinson, Stanford, Van De Wege, and Wilson, C.)

READ FIRST TIME 02/22/21.

1 AN ACT Relating to health insurance discrimination; amending RCW  
2 49.60.178, 41.05.017, and 48.43.0128; and adding a new section to  
3 chapter 74.09 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 49.60.178 and 2020 c 52 s 9 are each amended to read  
6 as follows:

7 (1) It is an unfair practice for any person whether acting for  
8 himself, herself, or another in connection with an insurance  
9 transaction or transaction with a health maintenance organization to  
10 cancel or fail or refuse to issue or renew insurance or a health  
11 maintenance agreement to any person because of sex, marital status,  
12 sexual orientation, race, creed, color, national origin, citizenship  
13 or immigration status, or the presence of any sensory, mental, or  
14 physical disability or the use of a trained dog guide or service  
15 animal by a person with disabilities: PROVIDED, That a practice which  
16 is not unlawful under RCW 48.30.300, 48.44.220, (~~( $\oplus$ )~~) 48.46.370, or  
17 48.43.0128 does not constitute an unfair practice for the purposes of  
18 this section. For the purposes of this section, "insurance  
19 transaction" is defined in RCW 48.01.060, health maintenance  
20 agreement is defined in RCW 48.46.020, and "health maintenance  
21 organization" is defined in RCW 48.46.020.

1       (2) The fact that such unfair practice may also be a violation of  
2 chapter 48.30, 48.43, 48.44, or 48.46 RCW does not constitute a  
3 defense to an action brought under this section.

4       (3) The insurance commissioner, under RCW 48.30.300 and  
5 48.43.0128, and the human rights commission, under chapter 49.60 RCW,  
6 shall have concurrent jurisdiction under this section and shall enter  
7 into a working agreement as to procedure to be followed in complaints  
8 under this section.

9       **Sec. 2.** RCW 41.05.017 and 2019 c 427 s 21 are each amended to  
10 read as follows:

11       Each health plan that provides medical insurance offered under  
12 this chapter, including plans created by insuring entities, plans not  
13 subject to the provisions of Title 48 RCW, and plans created under  
14 RCW 41.05.140, are subject to the provisions of RCW 48.43.500,  
15 70.02.045, 48.43.505 through 48.43.535, 48.43.537, 48.43.545,  
16 48.43.550, 70.02.110, 70.02.900, 48.43.190, 48.43.083, 48.43.0128,  
17 and chapter 48.49 RCW.

18       **Sec. 3.** RCW 48.43.0128 and 2020 c 228 s 9 are each amended to  
19 read as follows:

20       (1) A health carrier offering a nongrandfathered health plan or a  
21 plan deemed by the commissioner to have a short-term limited purpose  
22 or duration, or to be a student-only plan that is guaranteed  
23 renewable while the covered person is enrolled as a regular, full-  
24 time undergraduate student at an accredited higher education  
25 institution may not:

26       (a) In its benefit design or implementation of its benefit  
27 design, discriminate against individuals because of their age,  
28 expected length of life, present or predicted disability, degree of  
29 medical dependency, quality of life, or other health conditions; and

30       (b) With respect to the health plan or plan deemed by the  
31 commissioner to have a short-term limited purpose or duration, or to  
32 be a student-only plan that is guaranteed renewable while the covered  
33 person is enrolled as a regular, full-time undergraduate student at  
34 an accredited higher education institution, discriminate on the basis  
35 of race, color, national origin, disability, age, sex, gender  
36 identity, or sexual orientation.

1 (2) Nothing in this section may be construed to prevent ((an  
2 issuer)) a carrier from appropriately utilizing reasonable medical  
3 management techniques.

4 (3) For health plans issued or renewed on or after January 1,  
5 2022:

6 (a) A health carrier must not deny or limit coverage for gender  
7 affirming treatment when that treatment is prescribed to an  
8 individual because of, related to, or consistent with a person's  
9 gender expression or identity, as defined in RCW 49.60.040, is  
10 medically necessary, and is prescribed in accordance with accepted  
11 standards of care.

12 (b) A health carrier must not apply categorical cosmetic or  
13 blanket exclusions to gender affirming treatment. When prescribed as  
14 medically necessary gender affirming treatment, a health carrier must  
15 not exclude as cosmetic services facial feminization surgeries and  
16 other facial gender affirming treatment, such as tracheal shaves,  
17 hair electrolysis, and other care such as mastectomies, breast  
18 reductions, breast implants, or any combination of gender affirming  
19 procedures, including revisions to prior treatment.

20 (c) Health carriers must ensure that, prior to making an adverse  
21 benefit determination, health care providers who have experience  
22 prescribing or delivering gender affirming treatment review and  
23 approve the adverse benefit determination for gender affirming  
24 treatment.

25 (d) Health carriers must comply with all network access rules and  
26 requirements established by the commissioner.

27 (4) For the purposes of this section, "gender affirming  
28 treatment" means a service or product that a health care provider, as  
29 defined in RCW 70.02.010, prescribes to an individual to treat any  
30 condition related to the individual's gender identity and is  
31 prescribed in accordance with generally accepted standards of care.  
32 Gender affirming treatment must be covered in a manner compliant with  
33 the federal mental health parity and addiction equity act of 2008 and  
34 the federal affordable care act. Gender affirming treatment can be  
35 prescribed to two spirit, transgender, nonbinary, intersex, and other  
36 gender diverse individuals.

37 (5) Nothing in this section may be construed to mandate coverage  
38 of a service that is not medically necessary.

39 (6) By December 1, 2021, the commissioner, in consultation with  
40 the health care authority and the department of health, must issue a

1 report on geographic access to gender affirming treatment across the  
2 state. The report must include the number of gender affirming  
3 providers offering care in each county, the carriers and medicaid  
4 managed care organizations those providers have active contracts  
5 with, and the types of services provided by each provider in each  
6 region. The commissioner must update the report biannually and post  
7 the report on its website.

8 (7) The commissioner shall adopt any rules necessary to implement  
9 subsections (3), (4), and (5) of this section.

10 (8) Unless preempted by federal law, the commissioner shall adopt  
11 any rules necessary to implement subsections (1) and (2) of this  
12 section, consistent with federal rules and guidance in effect on  
13 January 1, 2017, implementing the patient protection and affordable  
14 care act.

15 NEW SECTION. Sec. 4. A new section is added to chapter 74.09  
16 RCW to read as follows:

17 (1) In the provision of gender affirming care services through  
18 programs under this chapter, the authority, managed care plans, and  
19 providers that administer or deliver such services may not  
20 discriminate in the delivery of a service provided through a program  
21 of the authority based on the covered person's gender identity or  
22 expression.

23 (2) The authority and any managed care plans delivering or  
24 administering services purchased or contracted for by the authority  
25 may not apply categorical cosmetic or blanket exclusions to gender  
26 affirming treatment.

27 (3) Facial feminization surgeries and facial gender affirming  
28 treatment, such as tracheal shaves, hair electrolysis, and other care  
29 such as mastectomies, breast reductions, breast implants, or any  
30 combination of gender affirming procedures, including revisions to  
31 prior treatment, when prescribed as gender affirming treatment, shall  
32 not be excluded as cosmetic.

33 (4) The authority and managed care plans administering services  
34 purchased or contracted for by the authority must ensure that, prior  
35 to making an adverse determination, health care providers who have  
36 experience prescribing or delivering gender affirming treatment  
37 review and approve the adverse benefit determination for gender  
38 affirming treatment.

1 (5) If the authority and managed care plans administering  
2 services purchased or contracted for by the authority do not have an  
3 adequate network for gender affirming treatment, they shall ensure  
4 the delivery of timely and geographically accessible medically  
5 necessary gender affirming treatment at no greater expense than if  
6 they had an in-network, geographically accessible provider available.  
7 This includes, but is not limited to, providing case management  
8 services to secure out-of-network gender affirming treatment options  
9 that are available to the enrollee in a timely manner within their  
10 geographic region. The enrollee shall pay no more than the same cost  
11 sharing that the enrollee would pay for the same covered services  
12 received from an in-network provider.

13 (6) For the purposes of this section, "gender affirming  
14 treatment" means a service or product that a health care provider, as  
15 defined in RCW 70.02.010, prescribes to an individual to support and  
16 affirm the individual's gender identity. Gender affirming treatment  
17 includes, but is not limited to, treatment for gender dysphoria.  
18 Gender affirming treatment can be prescribed to two spirit,  
19 transgender, nonbinary, and other gender diverse individuals.

20 (7) Nothing in this section may be construed to mandate coverage  
21 of a service that is not medically necessary.

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