

# HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

Tuesday, March 1, 2022, 9:30 a.m.  
Via Videoconference

To: The Honorable Karl Rhoads, Chair  
The Honorable Jarrett Keohokalole, Vice Chair  
Members of the Senate Committee on Judiciary

From: Liann Ebesugawa, Chair  
and Commissioners of the Hawai‘i Civil Rights Commission

## **Re: S.B. No. 2835, S.D. 1**

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

**The HCRC supports S.B. No. 2835, S.D. 1, with two concerns noted below.** S.B. No. 2835, S.D.1, would prohibit health insurance companies from denying coverage on the basis of gender identity if the policy covers the treatment for purposes other than gender transition. The bill further requires insurance companies 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.

This bill adds some important safeguards to current law, including a prohibition of denial

or cancellation of a policy based on transgender status, and the right to gender transition treatments. HCRC supports the rights of transgender individuals to access to coverage for gender affirmation.

**The HCRC supports S.B. No. 2835, S.D. 1, noting two concerns:**

1. Adding “transgender” before “person’s” but not before a person’s “family member’s,” in the amended H.R.S. § 431:10a-118.3(b)(1) could arguably eliminate protection for a person who has a transgender family member (child). The unintended consequence can be eliminated by adding the changes below in blue.

(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,

2. Deletion of “neither male nor female” from the definitions of “Actual Gender Identity” and “Perceived Gender Identity” could be interpreted as eliminating or diminishing protection against discrimination for non-binary persons who identify as neither male nor female.



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310  
P.O. BOX 541  
HONOLULU, HAWAII 96809  
Phone Number: 586-2850  
Fax Number: 586-2856  
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
Senate Committee on Judiciary  
Tuesday, March 1, 2022  
9:30 a.m.  
Via Videoconference**

**On the following measure:  
S.B. 2835, S.D. 1, RELATING TO INSURANCE**

**WRITTEN TESTIMONY ONLY**

Chair Rhoads and Members of the Committee:

My name is Colin M. Hayashida, and I am the Insurance Commissioner of the Department of Commerce and Consumer Affairs' (Department) Insurance Division. The Department offers comments on this bill.

The purposes of this bill are to: (1) prohibit health insurance companies from denying coverage on the basis of gender identity if the policy covers the treatment for purposes other than gender transition; and (2) require insurance companies 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.

S.D. 1 of this bill adds a new section 4, which includes amendments to Hawaii Revised Statutes (HRS) § 432D-26.3, which are similar to the amendments to HRS §§ 431:10A-118.3 and 432:1-607.3 in Sections 1 and 2 of this bill.

In addition, the Department concurs with requiring insurers to provide applicants and insureds with clear information about the coverage of gender transition services, including the process for appealing a claim denied on the basis of medical necessity.

However, language in Section 2, page 4, lines 18-19; Section 3, page 9, lines 20-21; and Section 4, page 14, lines 20-21, that “[a]ll health care services related to gender transition treatments shall be considered medically necessary[.]” read in conjunction with the amendments in this bill, may be construed to circumvent the analysis of medical necessity, which is defined in HRS § 432E-1.4.

Further, it is unclear whether these amendments would be construed as “in addition to the essential health benefits” within the meaning of 45 Code of Federal Regulations (CFR) § 155.170(a) or subject to defrayment provisions under 45 CFR § 155.170(b), which apply to benefits “in addition to the essential health benefits.”

These provisions to circumvent the medical necessity analysis do not seem consistent with the rest of this bill, which amends HRS §§ 431:10A-118.3(c), and 432:1-607.3(c), and 432D-26.3(c), (p.4 lines 4-17; p.9 lines 6-19; and p.14, lines 6-19) to make the medical necessity analysis more comprehensive,<sup>1</sup> and creates new subsections that would require health plans to provide information on medical necessity at p.5 line 17 to p.6, line 2; p.10 line 19 to p.11, line 4 line; and p.15, line 19 to p. 16, line 4.

For the Committee’s information, Hawaii Revised Statutes section 23-51 provides, in part, that “[b]efore any legislative measure that mandates health insurance coverage for specific health services, specific diseases, or certain providers of health care services as part of individual or group health insurance policies, [sic] can be considered, there shall be concurrent resolutions passed requesting the auditor to prepare and submit to the legislature a report[.]”

Thank you for the opportunity to testify.

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<sup>1</sup> We note that HRS section 432E-1.4 already sets forth standards for medical necessity, and HRS §§ 431:10A-118.3(c), 432:1-607(c), and 432D-26.3(c) provide that “the medical necessity of any treatment 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.” It is unclear whether this bill’s amendments to HRS §§ 431:10A-118.3(c), 432:1-607(c), and 432D-26.3(c) to define the medical necessity in accordance with a particular standard may be construed to narrow the scope of the medical necessity analysis or if they are intended to add additional criteria to the analysis.



February 25, 2022

The Honorable Karl Rhoads, Chair  
The Honorable Jarrett Keohokalole, Vice Chair  
Senate Committee on Judiciary

Re: SB 2835 SD1 – Relating to Insurance

Dear Chair Rhoads, Vice Chair Keohokalole, and Committee Members:

Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 2405, HD1, which permits health insurers, mutual benefit societies, and health maintenance organizations to consider gender transition treatments medically necessary if the policy covers the treatment for purposes other than gender transition. Requires 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. Effective 7/1/2060.

As a supporter of the LGBTQ+ community, HMSA offers gender transition benefits for many of our members. This policy covers gender identity and transition services based on medical necessity as defined by HRS 432E-1.4. HMSA is committed to providing clear information about our gender identity and transition services including our appeals process. While we appreciate the amendments made in the last committee, we do continue to have concerns regarding this measure as written.

One of our concerns is regarding medical necessity which is a method placed in statue to allow for a clinical determination of whether a health intervention is appropriate considering potential harms and benefits to the patient; effectiveness in improving health outcomes; and cost-effectiveness for the medical condition being treated, compared to alternative health interventions, based on clinical and scientific evidence and data. The medical directors making such determinations are licensed specialists in their field who utilize clinical best practices and evidence-based data from peer reviewed medical journals to make decisions for our members.

As written, we believe this measure could increase costs for our entire membership. Initial estimates place the cost impact at \$7.7M in our commercial line of business. Such a high cost would be subject to defrayment by the state as the procedures outlined in this measure go beyond Affordable Care Act essential health benefits per 45 CFR § 155.170(a) and 45 CFR § 155.170(b). Therefore, should this measure move forward we would like to respectfully request the State Auditor first conduct an impact assessment report pursuant to Sections 23-51 and 23-52 of the Hawaii Revised Statutes.

Thank you for the opportunity to testify in opposition to this measure. Your consideration of our comments is appreciated.



Sincerely,

A handwritten signature in black ink, appearing to read "Matthew W. Sasaki". The signature is fluid and cursive, with the first name being the most prominent.

Matthew W. Sasaki  
Assistant Vice President  
Government & External Relations



28 February 2022

Members of the Senate Judiciary Committee:

As a grassroots network striving to bring people together across O'ahu's north and windward shores to ensure that the region that we call home is welcoming, inclusive, and supportive of LGBTQ+ individuals, the North Shore Ko'olau Diversity Collective writes in **Strong Support of SB2835 SD1**.

We stand in solidarity with the array of local health, civil rights, and community advocacy organizations that highlight the fact that there is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary (not cosmetic) and should be covered by transgender patients' insurance. Without insurance coverage of these medically necessary procedures, trans lives are put at risk for depression and suicidal ideation.

Passage of this bill must also ensure that insurance companies are not ignoring the majority of medical opinion and Act 135 by forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41).

As a region without legislative allies or advocates, and in which the needs, concerns, and voices of the LGBTQ+ community are still often overlooked, ignored, and rendered invisible, we are counting on you to help secure the health and safety of our mähū and trans family, friends, and allies.

Thank you for your attention to these concerns,

*Joe Wilson, Liz Rago, Michelle Johnson Blimes,  
Hao Le, Bethany Berry-Weiss, Kunane Dreier, Torrey Lock*  
Organizing Committee

**[nskdivseristycollective.com](http://nskdivseristycollective.com)**

February 25, 2022

The Honorable Karl Rhoads, *Chair*  
The Honorable Jarrett Keohokalole, *Vice Chair*  
Senate Committee on Judiciary  
415 South Beretania St.  
Honolulu, HI 96813

**RE: Support of Senate Bill 2835**

Dear Chair Rhoads and Vice Chair Keohokalole:

On behalf of the Northwest Society of Plastic Surgeons (NWSPS) and the American Society of Plastic Surgeons (ASPS), we are writing **in support of** Senate Bill 2835. ASPS is the largest association of plastic surgeons in the world, and in conjunction with NWSPS, represents more than 8,000 members and 93 percent of all board-certified plastic surgeons in the United States – including 38 board-certified plastic surgeons in Hawaii. Our mission is to advance quality care for plastic surgery patients, including those patients experiencing gender dysphoria, a condition in which a person experiences severe distress due to a disconnect between how they feel and their anatomic characteristics.

As surgeons who provide care for transgender individuals, our members know firsthand the effects of gender dysphoria. Individuals with gender dysphoria often describe being born in the wrong body, and plastic surgery is an important step in aligning their bodies with whom they know themselves to be. Care of individuals with gender dysphoria requires a multidisciplinary approach that may include mental health professionals, primary care physicians, endocrinologists, and plastic surgeons. ASPS strongly supports S.B. 2835 and the clear effort to improve the delivery of transgender services in Hawaii by ensuring all related medically necessary services are covered by insurers and guaranteeing that transgender individuals cannot be discriminated against by health insurers.

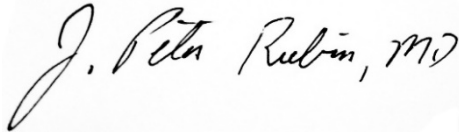
We would like to applaud Hawaii for recognizing that gender affirming surgeries are an important part of transgender patients' overall transition-related care that help them better identify with their gendered self, which in turn enhances their psychological well-being and overall health. It is our firm belief that by working together, health care teams and insurers – both private and public – can help meet the World Professional Association for Transgender Health's high standards to enhance health, happiness, and contentment. S.B. 2835 is a critical step in the right direction of achieving that goal and ensuring transgender individuals can obtain comprehensive and quality health care.

For these reasons outlined above, we support S.B. 2835 and the protection they ensure for the transgender community in Hawaii. Thank you for your consideration of ASPS's comments. Please do

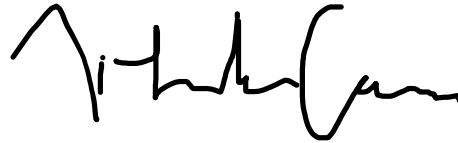


not hesitate to contact Patrick Hermes, Director of Advocacy and Government Relations, at [pghermes@plasticsurgery.org](mailto:pghermes@plasticsurgery.org) or (847) 228-3331 with any questions or concerns.

Sincerely,

Handwritten signature of J. Peter Rubin, MD in black ink on a light background.

J. Peter Rubin, MD, MBA, FACS  
President, American Society of Plastic Surgeons

Handwritten signature of Nicholas Carr, MD in black ink.

Nicholas Carr, MD, FRCSC  
President, Northwest Society of Plastic Surgeons

cc: Members, Senate Committee on Judiciary

**SB-2835-SD-1**

Submitted on: 2/26/2022 7:52:01 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Mike Golojuch, Sr.	Testifying for Rainbow Family 808	Support	No

Comments:

Rainbow Family 808 supports SB2835. Please pass.

Mike Golojuch, Sr. Secretary/Board Member, Rainbow Family 808

**SB-2835-SD-1**

Submitted on: 2/24/2022 5:11:06 PM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Michael Golojuch Jr	Testifying for Stonewall Caucus of the Democratic Party of Hawaii	Support	Yes

Comments:

Aloha Senators,

The Stonewall Caucus of the Democratic Party of Hawai'i (formerly the LGBT Caucus) Hawai'i's oldest and largest policy and political LGBTQIA+ focused organization fully supports SB 2835 SD 1.

We hope you all will support this important piece of legislation.

Mahalo nui loa,

Michael Golojuch, Jr.  
Chair and SCC Representative  
Stonewall Caucus for the DPH



Testimony of  
John M. Kirimitsu  
Legal & Government Relations Consultant

Before:  
Senate Committee on Judiciary  
The Honorable Karl Rhoads, Chair  
The Honorable Jarrett Keohokalole, Vice Chair

March 1, 2022  
9:30 am  
Via Videoconference

**Re: SB 2835 SD1 Relating to Insurance**

Chair, Vice Chair, and committee members, thank you for this opportunity to provide testimony on the decision making for SB 2835 SD1 prohibiting insurance companies from denying coverage on the basis of gender identity.

**Kaiser Permanente Hawaii would like to offer comments on SB 2835 SD1.**

Kaiser Permanente is a nationally recognized leader in LGBTQ health care equality, providing full spectrum medical, surgical and mental health care to our transgender patients and members. We are proud to offer gender-affirming services that ensure respectful, equitable, and inclusive care to all our transgender and gender diverse patients and members everywhere that we deliver care.

That being said, Kaiser Permanente is concerned that the reference in Section 3, page 9, lines 15-16, that “[a]ll health care services related to gender transition treatments shall be considered medically necessary[,]” may be misconstrued as bypassing the nationally recognized medical necessity standard in accordance with HRS § 432E-1.4.

Additionally, Kaiser Permanente has concerns that some of the transgender services listed in this bill are not evidenced-based or deemed medically necessary because they are purely cosmetic, and therefore excluded from insurance coverage. If this bill moves forward, we request that the legislative auditor conduct an impact assessment report, as statutorily required under Section 23-51 and Section 23-52 of the Hawaii Revised Statutes, given that this bill would be mandating transgender services that are not currently covered by health plans.

Thank you for the opportunity to comment.

711 Kapiolani Blvd  
Honolulu, Hawaii 96813  
Telephone: 808-432-5224  
Facsimile: 808-432-5906  
Mobile: 808-282-6642  
E-mail: John.M.Kirimitsu@kp.org



## TESTIMONY IN SUPPORT OF SB 2835 SD1

TO: Chair Rhoads, Vice-Chair Keohokalole, & Members – House Committee on  
Judiciary

FROM: Maddalynn Seseapasara  
Kua'ana Project Manager

DATE: March 1, 2022 at 9:30 AM

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Hawai'i Health & Harm Reduction Center (HHRC) **supports** SB 2835 SD1. This bill requires insurance providers to post their gender identity policies and clarifies the language of Act 135 (2016), which states that insurance agencies cannot discriminate based on gender identity. Without the clarifications in this bill, insurance companies in Hawai'i will likely continue to categorically deny surgeries they claim are not medically necessary despite the reality of the science, law, and, most importantly, the lived experiences of māhū and trans people in Hawai'i.

HHRC's mission is to reduce harm, promote health, create wellness, and fight stigma in Hawai'i and the Pacific. We work with many individuals who are adversely impacted by poverty, housing instability, discrimination, healthcare inequity and other social determinants of health. HHRC operates the Kua'ana Project through which peers of the transgender community *kōkua* (*assist*) other transpersons using their own personal experiences. Whether it be to search for jobs, legally change their names, or access healthcare and stable housing, our Kua'ana Project staff are able to support and encourage māhū and trans people with compassion, understanding.

Because of our leadership in the local transgender community, we frequently hear from community members seeking gender affirming surgery and healthcare. Despite Act 135 from 2016, trans community members continue to be denied medically necessary and life-saving procedures. There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary and should be fully covered by patients' insurance. Without insurance coverage of these medically necessary procedures (that are provided for the cisgender people), trans lives are put at risk for depression and suicidal ideation.

We need your help in correcting this issue of gender-based discrimination. Thank you for the opportunity to testify in support of this bill.

**SB-2835-SD-1**

Submitted on: 2/28/2022 8:11:36 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Maddison Moliga	Testifying for Hawaii Health & Harm Reduction Center	Support	No

Comments:

Dear Chair Rhoads, Vice Chair Keohokalole, and Honorable Members of the Committee:

I strongly support SB 2835 SD1 which clarifies the language on the transgender anti-discrimination health insurance law (Act 135, 2016) to ensure the prohibition of categorical denials of gender affirming treatments/surgeries and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary (not cosmetic) and should be covered by transgender patients' insurance. Without insurance coverage of these medically necessary procedures, trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and Act 135 by forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) by passing this bill.

Thank you for investing in the health and safety of our māhū and trans community members!

Sincerely,

Maddison Moliga

LGB&T Youth Case Manager



## HIPHI Board

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KM Consulting LLC

JoAnn Tsark, MPH  
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Department of Pediatrics

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University of Hawai'i at Hilo

Michael Robinson, MBA, MA  
Hawai'i Pacific Health

Kathleen Roche, MS, RN, CENP  
Kaiser Permanente

Dina Shek, JD  
Medical-Legal Partnership  
For Children in Hawai'i

Garret Sugai  
Pharmacare Hawai'i

Titiimaea Ta'ase, JD  
State of Hawai'i, Deputy Public Defender

## HIPHI Initiatives

Coalition for a  
Tobacco-Free Hawai'i

Community Health  
Worker Initiative

COVID-19 Response

Hawai'i Drug & Alcohol Free  
Coalitions

Hawai'i Farm to School Hui

Hawai'i Oral Health Coalition

Hawai'i Public Health Training Hui

Healthy Eating + Active Living

Kūpuna Food Security Coalition

Date: February 28, 2022

To: Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair  
Members of the Committee on Judiciary

Re: Support SB 2835, SD1, Relating to Insurance

Hrg: March 1, 2022 at 9:30 AM via Videoconference

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The Hawai'i Public Health Institute<sup>i</sup> is in **support of SB 2835, SD1**, which clarifies existing state law regarding nondiscrimination in insurance coverage of gender-affirming care.

HIPHI strives to eliminate health disparities and injustices to improve the health and wellness of all people. Gender-affirming care saves lives, and denying access to health care services and treatments on the basis of gender identity runs contrary to public health by perpetuating stigma and exacerbating existing health disparities. For us, eliminating health disparities means moving beyond advocating *for* equity, but rather amplifying our work *against* inequity.

Health insurance denials constitute one of the most oft-cited discriminatory barriers for transgender communities, with one quarter of people identifying as transgender reporting having been denied insurance coverage on the basis of their gender identity.<sup>ii</sup> Although the nondiscrimination provision of the federal Affordable Care Act and Hawai'i law<sup>iii</sup> prohibit such denials, local patients report continued denials of insurance coverage for services that otherwise meet the standard of medically necessary care.

Major public health and medical associations recognize the benefits of and support access to gender-affirming care, and have acknowledged the devastating health consequences of discrimination against transgender communities.<sup>iv</sup> The American Medical Association,<sup>v</sup> American Academy of Pediatrics,<sup>vi</sup> Association of American Medical Colleges,<sup>vii</sup> American Psychological Association,<sup>viii</sup> and American Public Health Association,<sup>ix</sup> support public and private practices and policies that are inclusive of transgender, gender diverse, and nonbinary people.

SB 2835 is a step forward in eliminating barriers to health care for transgender communities in Hawai'i by clarifying that gender-affirming care is medically necessary and therefore must be covered so long as



those same services are covered for reasons unrelated to gender affirmation. This will ensure parity in coverage and compliance with existing law. For these reasons, HIPHI respectfully requests that you support this measure.

Mahalo,



Amanda Fernandes, JD  
Policy and Advocacy Director

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<sup>i</sup> Hawai'i Public Health Institute is a hub for building healthy communities, providing issue-based advocacy, education, and technical assistance through partnerships with government, academia, foundations, business, and community-based organizations.

<sup>ii</sup> James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, DC: National Center for Transgender Equality.

<sup>iii</sup> Hawai'i Revised Statutes §431:10A-118.3.

<sup>iv</sup> American Medical Association, *Issue Brief: Health insurance coverage for gender-affirming care of transgender patients*, 2019. <https://www.ama-assn.org/system/files/2019-03/transgender-coverage-issue-brief.pdf>.

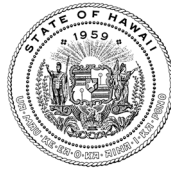
<sup>v</sup> American Medical Association Issue Brief, *supra*; "The AMA opposes the denial of health insurance on the basis of sexual orientation or gender identity." American Medical Association Policy H-180.980. <https://policysearch.ama-assn.org/policyfinder/detail/H-180.980?uri=%2FAMADoc%2FHOD.xml-0-1086.xml>.

<sup>vi</sup> "Proper gender-affirming care can mitigate a patient's clinical distress and lead to significant improvements in the overall well-being of youth and adolescents who are at risk of or have been diagnosed with gender dysphoria." Brandt et al., v. Rutledge, 4:21-CV-00450-JM, US. District Court Eastern District of Arkansas Central Division, *Amicus Brief of American Academy of Pediatrics*, filed June 23, 2021.

<sup>vii</sup> "Efforts to restrict the provision of gender-affirming health care for transgender individuals will reduce health care access for transgender Americans, promote discrimination, and widen already significant health inequities." American Association of Medical Colleges Statement on Gender-affirming Health Care for Transgender Youth, April 9, 2021. <https://www.aamc.org/news-insights/press-releases/aamc-statement-gender-affirming-health-care-transgender-youth>.

<sup>viii</sup> Resolution on Supporting Sexual/Gender Diverse Children and Adolescents in Schools, American Psychological Association, 2020. <https://www.apa.org/pi/lgbt/resources/policy/gender-diverse-children>.

<sup>ix</sup> "APHA urges Congress, state legislatures, and other public and private entities to ensure that policies and practices across all sectors are explicitly inclusive of transgender and gender-nonconforming people." American Public Health Association, Policy No. 20169, Nov 01, 2016. <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2017/01/26/promoting-transgender-and-gender-minority-health-through-inclusive-policies-and-practices>.



**LATE**

**STATE OF HAWAII**  
**HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND**  
201 MERCHANT STREET, SUITE 1700  
HONOLULU, HAWAII 96813  
Oahu (808) 586-7390  
Toll Free 1(800) 295-0089  
www.eutf.hawaii.gov

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DONNA A. TONAKI

**WRITTEN ONLY**

TESTIMONY BY DEREK MIZUNO  
ADMINISTRATOR, HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE SENATE COMMITTEE ON JUDICIARY  
ON SENATE BILL NO. 2835 SD1

**March 1, 2022**  
**9:30 a.m.**  
**Videoconference**

RELATING TO INSURANCE

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Hawaii Employer-Union Health Benefits Trust Fund (EUTF) Board of Trustees has not taken a position on this bill. EUTF staff would like to inform the Committee that passage of this bill is estimated to increase costs to the EUTF health plans by approximately \$2.4 million annually and increase the State's unfunded liability by approximately \$17.2 million.

Thank you for the opportunity to testify.



Hi there! My name is Breanna Zoey, my pronouns are she/her, and I am transgender. I appreciate the opportunity to submit this testimony **IN SUPPORT** of SB2835 and the JDC committee's decision making in favor of this legislation which would help end much of the discrimination and unlawful health insurance denials that I have personally faced in the last year, and that many of my fellow trans and gender nonconforming folx continue to face routinely. *I would like to propose for the decision making: because this legislation is not mandating the coverage of any services that aren't already covered for non-trans conditions, but rather clarifying and informing insurance companies that they need to stop denying medically necessary care and listen to the broader medical consensus and treating physician expertise, I propose the legislature make it clear this legislation/clarification be effective retroactively. There are people who requested health care coverage for medically necessary transgender care and who were denied by insurance 3, 6, 12, etc months ago. Just because insurance denied them in the recent past does not mean that the requested care was not medically necessary or that the requested care shouldn't have been covered in the first place. People who were arbitrarily and wrongfully already denied by the insurance companies should be afforded coverage for their previously-requested care just as people moving forward should be afforded access to coverage. Many previously-denied people have had to self-finance their care, and they should be made whole. It's the right thing to do. And to the insurance company(s) who will whine about statute of limitations, claims timeliness, and cost, it's your own fault for discriminating and arbitrarily denying people for years and the patients you have wronged should not bear the burden of your mistakes.*

I am available to any committee or member who wishes to speak with me to better understand my real-life experiences with our insurance companies in Hawaii, the discrimination that too many trans people like me currently face with health insurance coverage, why we need legislation like this to pass, and why everything that the big insurance companies say when opposing this legislation is pure bullsh\*t and/or are all outright lies or skewed framing...

When quite literally everyone is supporting this legislation except for an insurance company, I think it's clear who is on the "right" and "wrong" side of history. It boggles my mind that an insurance company can in good conscience say that they are "a supporter of the LGBTQ+ community," while at the same time fight **so hard** against legislation that would ensure the LGBTQ+ community has access to the health care coverage we're already afforded by law.

## Highlights of my testimony and personal experience with insurance as a trans person

*(trigger warning: mention of suicide)*

1. My insurance company has arbitrarily denied my transgender health care coverage requests over and over in 2021. They keep calling my care "not medically necessary" and say that it will not improve the quality of my life. Insurance says these things despite the outside world having already shown this care to be medically necessary, appropriate, and in fact **life saving**
2. Despite my strength and resilience, even the strongest folks can only take so much discrimination sometimes. My insurance company's persistent discrimination and hurtful, arbitrary, and wrongful comments and adverse determinations led me to the brink of **suicide** a few times in 2021, some of the darkest moments of my entire life. Thank goodness I hung in there and did not let an insurance company get the best of me and end my life, because now that I'm winning the insurance fights and accessing the health care coverage that I need, my quality of life has never been better!!! But this is unfortunately what happens far too often when trans people





are denied access to the health care and coverage they need. **Approving medically necessary trans health care saves lives, plain and simple, and I'm a living example of that.**

3. My insurance company consistently uses non-experts in the review and denial process who seem to have no clinical experience treating or prescribing gender affirming care, and who refuse to accept the medical consensus that the world knows to be factual and which is provided to them time and time again. Every time I've been denied, my insurance company has used a run-of-the-mill pediatrician (Dr. A) and a general hospitalist (Dr. G), who from the public domain perspective have no experience treating or prescribing care for trans adults, and who I argue have never demonstrated that they've even reviewed or considered any of the information that I or my providers have submitted. It's so nonsense
4. My insurance company has denied or initially refused (heavily) to provide me with so much health care coverage in 2021. When I've challenged the insurance company, I have ultimately been approved for **breast augmentation, facial gender confirmation surgery, tracheal shave, and electrolysis prior to bottom surgery.** This goes to show the arbitrary insurance denials on trans care have no merit or grounds to stand on, and the overturns demonstrate how our Hawaii insurance companies are issuing denials that are not appropriate or grounded in reality
5. My health care needs are not inherently special or unique. Other trans people need coverage for the same care I've been able to get approved for in 2021, yet my insurance company continues to deny my friends' health care as "not medically necessary" even after the company has already been overturned on my care and provided with enough scientific evidence and research to cover it for other people
6. This legislation would not be a new mandate. Insurance companies already cover the same health care services for non-transgender individuals and conditions, and I have it in writing from my insurance company that this is the case for my facial gender confirmation surgery, tracheal shave, and facial electrolysis (and we know breast reconstruction/augmentation is covered per the Women's Health and Cancer Rights Act of 1997). I'm happy to provide documents to the committee or members where HMSA confirmed (*in writing to me and also to the insurance commissioner*) that my requested trans health care is already a benefit of my HMSA plan for non-trans conditions

Our insurance companies in general have been flagrantly violating existing non-discrimination laws by continuing to deny so much trans health care and arbitrarily calling it "not medically necessary." The scientific literature, the peer-reviewed research, the academic journals, the global professional and expert associations who write the rules and recommendations for trans health care, they have all already evidenced that trans health care is medically necessary and can be vital to an individual's well-being and safety.

Through my challenges to my health insurance company in the past year and by using the protections afforded to me by the ACA, I have overturned the insurance denials and got approved for a few gender affirming surgeries and care that continue to be denied for others who cannot or do not fight as hard as I was able to... There is nothing special or inherently unique about me or my health care needs. I am just an ordinary transgender schmuck who knows her rights under state and federal law and who will hold her insurance company accountable. The health care I have and continue to personally be approved for is nothing but commonsense, and we need to ensure this care and coverage is available to everybody who needs it and without subjecting them to intense fights with big insurance.

### **My experiences with insurance in 2021 as a trans person (trigger warning: mention of suicide)**

My insurance company nearly cost me my life in 2021 by refusing to provide me with coverage for medically necessary care and through some of the horrific things that were said and done throughout the process of denying





my care time and time again. In kindergarten language, because of my insurance company I was the blink of an eye away from ending my life by suicide last year (I had never felt such depression and hopelessness prior to the insurance discrimination). It's not because I am weak or that I am not resilient, and in fact to the contrary I think I've been incredibly strong and resilient as I've successfully challenged HMSA's denials and endured some of the greatest challenges of my life.

Trans people are already marginalized and struggle in so many ways, and when folks cannot access the gender affirming care they need and want it's been shown time and time again that the prevalence of self-harm and suicide go through the roof. Even the strongest of individuals cannot forever evade the realities of continued and persistent discrimination. I honestly do not know how I am still here today, but I am sure glad that I did not die otherwise I wouldn't be able to share my experiences or continue to advocate against big insurance and to help ensure we put an end to this discrimination. Since I've been able to access the gender affirming health care coverage I need, my quality of life has never been better and those feelings of depression and hopelessness have largely subsided. My insurance company literally told me in writing (see denial quotes on next page) that my health care wouldn't reduce the likelihood of self-harm or suicide, and that my health care wouldn't improve the quality of my life. I don't know how I can better demonstrate that my insurance company isn't getting things right, and that they need some external encouragement. I want no one else to have to suffer or endure some of the things my insurance company put me through in 2021 and continues to put me through today.

In the last 11 months alone I have had to spend roughly 300 hours challenging HMSA and to successfully get them to approve coverage for:

- a- Gender affirming breast augmentation
- b- Facial gender confirmation surgery
- c- Tracheal shave (reduction thyroid chondroplasty)
- d- Electrolysis coverage prior to bottom surgery

In the end, my health care has thus far ultimately been approved for coverage because it is commonsense and the world knows it to be medically necessary. For some of these I've had to use the rights and protections that the affordable care act (ACA) affords to me, like an Independent Medical Review (IMR) where the denials are reviewed by outside experts and the decision making is removed from the insurance company.

## Reasons why HMSA has denied my trans health care needs in 2021

These are just some of the reasons that HMSA issued to me in writing when denying my personal health care coverage requests over the last year or so (spoiler alert: every single reason is not an accurate reflection of reality and is false):

- 1) "nor is there proof that in those who self-harm that [the requested service] decreases that behavior"
- 2) "there is lack of support of improvement of quality of life"
- 3) "the requested procedures are not considered effective in improving health outcomes"
- 4) "gender dysphoria does not meet the definition of medical condition"
- 5) "published, peer-reviewed data does not support that the surgical procedure performed achieves outcomes in the treatment of gender dysphoria and/or gender incongruence that are superior to or equivalent to alternative interventions for treatment"
- 6) "exaggerate[s] masculine or feminine traits beyond the range of norms found within society"
- 7) "primarily serve[s] to beautify or otherwise enhance physical appearance"





- 8) "deny as does not meet current GIS policy criteria nor medical necessity, due to lack of supporting evidence that these procedures help to improve health outcomes"
- 9) "there is no decisive or definite absolute indication that health outcomes are improved with the use of facial feminization surgery"
- 10) "the research studies that show persistent improvement in quality of life in the long term are limited"
- 11) "there are very limited supporting data showing overall improved daily functioning following these procedures; therefore a conclusion that improved health outcomes will occur is not supported by clinical evidence. Therefore, the requested procedures are not medically necessary"
- 12) "there is limited literature review and research that support complete resolution or satisfaction upon completion of the surgical procedure"
- 13) "there is insufficient research studies that further support improvement in health outcome, daily functioning following successful completion of the surgery"
- 14) "removal of the facial hair is not critical for the process of gender reassignment"
- 15) "electrolysis of the facial hair would not improve the overall health outcome as measured by length or quality of the patient's life"
- 16) "there is no evidence of expert opinion that supports the attestation that electrolysis of facial hair improves the overall health outcome"

This is just a handful of the bogus and uninformed reasons my insurance company had denied my care for in the past 11 months, and they are all not true. To emphasize the severity of the situation we're dealing with in Hawaii, take another look at #1 above where HMSA says access to gender affirming care doesn't reduce the likelihood of self-harm and suicide. Seriously? There is no better way to demonstrate that Hawaii insurance companies do not understand trans health care at all. Since I've been able to access and get approved for gender affirming care, my quality of life has increased significantly and my depression, anxiety, and unwanted desires to self-harm have all decreased immensely, just as the research says happens when people can access gender affirming health care and coverage. The fact insurance here continues to say trans health care doesn't save lives and doesn't/won't improve quality of life is a kick in the gut to say the least and makes absolutely no sense.

Not accessing health care is not an option for most people because all that results in is increased depression and anxiety, increased gender dysphoria and misgendering, decreased social functioning, increased likelihood of physical harm and hate crimes, and unfortunately increased suicides and attempts. Access to gender affirming care quite literally saves lives, and I am a living example of that.

### **Financial impacts when my trans health care was denied**

- While I was fighting my insurance company on their denials last year I had to take out a 401k loan to self-finance breast augmentation (which eventually was overturned and paid for by insurance)
- I was then moments away from needing to take out a second mortgage in order to keep my facial surgeries moving along (fortunately I overturned HMSA's denials using the ACA's protections before the 2<sup>nd</sup> mortgage was executed)
- In 2022 I've had to take a second/part-time job (in addition to my regular/full-time job) in order to pay for my health care needs (facial electrolysis) while I continue to challenge HMSA's denials using the ACA's protections and prepare for potential litigation/lawsuit
- I've even seriously considered renting out my apartment and living out of my car for 6-12 months out of desperation and in order to be able to help pay for my health care needs (which let me remind you are







already viewed as a medical necessity and covered by existing state law, whether or not my insurance company will agree or admit it)

I've had to do and consider all of these things as a direct result of my insurance company discriminating against me and denying my medically necessary health care. No one should be required to do such things in order to access lifesaving health care that the world already views as being medically necessary.

### **Costs when insurance is allowed to discriminate and deny trans care unjustly**

Think about this, what would the costs be for refusing to provide medically necessary health care coverage for trans people? And I don't just mean *'well, by refusing to cover the health care the financial costs would be zero, duh.'* I mean the costs associated with everything else like overall mental health, anxiety, depression, gender dysphoria, social functioning, increased discrimination with respect to life (housing, employment, and other disparities)... all of these things often result in ***increased costs*** such as for example:

- increased therapy sessions re: gender dysphoria, and all the things associated with it...
- unnecessarily elevated anxiety...
- unnecessarily worse depression...
- increased medications for patients who need them for anxiety/depression that could have been alleviated if care was approved...
- increased ER visits for patients who are forcefully kept in an unstable place through health care denials....
- other unsafe coping mechanisms like drugs and alcohol...
- increased risky behaviors like selling drugs or prostitution in an attempt to fund health care that insurance denied...
- potentially unstable housing and challenges gaining or retaining employment...
- and possibly one of the worst would be increased suicides and attempts as a result of all of the costs such as these.

I wish someone would ask HMSA "Hey, HMSA, when you do not provide coverage for medically necessary trans care, how much do these costs that Breanna mentioned add up to?" or... "Hey, HMSA, if you start covering medically necessary trans care, how much of a reduction do you expect to see when these costs Breanna mentioned are avoided?".... When an insurance company spits out a number, any number, however skewed, and they say 'covering trans care would cost \$XXX,' they are not factoring in these kinds of things and they are misleading the legislature as to the costs.

### **This legislation is not a new mandate**

With respect to my insurance company, they already view my trans health care services as covered benefits when prescribed for non-trans conditions and treatments. Every time I challenge HMSA under the affordable care act, HMSA is required to check a yes/no box that asks if my requested health care would ordinarily be a covered benefit





of the plan had they not deemed it to be not medically necessary. When push comes to shove HMSA always checks the "yes" box, indicating that my requested care is already a benefit for non-trans conditions and when medically necessary. This legislation does not mandate the coverage of anything that isn't already covered and paid for by insurance... we're just tightening up the idea that insurance companies should not be discriminating against trans folks and denying health care on the basis of our gender identity and when the care is treating gender dysphoria, especially when the world already knows this health care to be medically necessary, appropriate, and well-supported. I am happy to provide written documentation, to any interested legislators or committees, where my insurance company put in writing that my trans health care requests are already covered benefits of my plan.

### Insurance companies arbitrarily deny trans care by using non-expert reviewers

My insurance company has been denying much of my gender affirming care over the past 11 months by using reviewers who seem to have zero experience in treating trans patients or prescribing care for trans folks, who do not seem to understand trans health care, who do not seem to even review the science and evidence that I and my providers have been providing to them time and time again, and who simply have no business being involved in transgender decision making in my opinion. When I request coverage, HMSA requires me to submit letters of medical necessity from providers who are highly trained and experienced with trans care and who meet specific criteria and characteristics as defined by the insurance company and WPATH (like education and relevant clinical experience). However, my insurance company has not been using reviewers with comparable knowledge and expertise when reviewing and denying me. I alleged this problem last year via the insurance commissioner's office, and HMSA responded with the following:

*"...the "Characteristics" set forth in Appendix A of the GIS Policy apply to a member's treating providers and not the clinical reviewers"*

*"...there is no requirement that a "reviewing body" must have such credentials."*

In kindergarten language, my insurance company said that while they require my treating and referring providers to be highly skilled and trained in trans health care and meet specific criteria, HMSA's reviewers do not need to be comparable in knowledge and expertise, which would be fine ONLY IF HMSA would listen to and defer to the clinical judgements of the experts who are treating the patient (my insurance does not currently listen to or defer to the expertise of the experts they require me to bring into the process when requesting insurance coverage). Please tell me how that makes any sense at all. This all results in insurance companies not understanding transgender health care and they are making arbitrary and uninformed denials.

### Health plans on the mainland already cover trans health care

The majority of insurance on the mainland already understand trans health care is medically necessary and routinely cover it. For example, **within blue cross blue shield alone nearly 85% of mainland states/companies already routinely cover breast augmentation for trans women, and about half routinely cover facial gender confirmation surgeries** (with more starting to cover it as of 2021 and 2022). HMSA does not routinely cover this care, and in fact they routinely DENY this medically necessary care for the reasons I've listed above. On the same notion, my facial electrolysis care is recognized as medically necessary and covered by MANY mainland BCBS companies (and the broader medical consensus), yet here in Hawaii HMSA thinks they know better and they call







my electrolysis care not medically necessary and they make me fight so hard (leading up to potential discrimination litigation this year if their attitudes don't change).

Some of our Hawaii insurance companies are on the wrong side of history with all of this, and I'd love for someone to rationalize why my health care is widely viewed as medically necessary in the mainland and around the world, but because I live in Hawaii suddenly big insurance can call my care not medically necessary. It makes no sense and this shows that at least my insurance company is out of sync with the broader world.

### The end

Please pass this commonsense legislation in 2022. There is quite literally no reason why this legislation should not pass, and there is no reason why we should allow Hawaii insurance companies to continue to flagrantly and arbitrarily deny trans health care and go against the grain of reality. And like I said in the beginning, we should ensure that trans folk who previously requested coverage and who were denied by insurance are also afforded coverage when this legislation passes, because their previously-requested care was just as medically necessary and just as covered as it would be viewed today.

I am happy to speak more in depth with any member or committee regarding my personal experience. Thank you for this opportunity. -Breanna Zoey (she/her)



**SB-2835-SD-1**

Submitted on: 2/25/2022 12:23:31 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Thaddeus Pham	Individual	Support	No

Comments:

Dear Chair Rhoads, Vice Chair Keohokalole, and Members of the JDC Committee:

As a public health professional and concerned member of the LGBTQIA+ community, I strongly support SB2835 SD1 which updates the language on the transgender anti-discrimination health insurance law and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary and should be fully covered by patients' insurance. Without insurance coverage of these medically necessary procedures (that are provided for the cisgender people), trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) that ignore the law and medical necessity of gender-affirming care by passing this bill.

Thank you for investing in the health and safety of our māhū and trans community members!

With gratitude,

Thaddeus Pham (he/him)

Aloha Chair Rhoads, Vice Chair Keohokalole, and Honorable Members,

I write in strong support of SB2835 SD1. SB2835 SD1 seeks to prohibit categorical denials altogether, and the amendments we crafted below, based on [Washington State](#) law, would prohibit categorical denials and have the same desired effect of SB2835. Please **PASS** this measure to ensure access to gender affirming care and to prevent insurers from going against the majority of medical opinion.

Gender-affirming treatment is almost always medically necessary and therefore categorical insurance denials such as [breast augmentation and facial feminization](#) (See HMSA Policy Number: MM.06.026 on page 1 paragraph 3) violate Act 135, 2016.

**Evidence that surgeries and treatments categorically denied are medically necessary, not cosmetic:**

There is an overwhelming and growing consensus among major medical organizations that transition related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary (not cosmetic) and should be fully covered by patients' insurance.

- Medical necessity of facial gender reassignment surgery for transgender women, [https://transhealthproject.org/documents/34/Facial\\_surgery\\_medical\\_necessity\\_literature\\_review.pdf?fbclid=IwAR3k8TkEPJa4MDY1DIYoPqaopf8h9zTEV4Ani6IA7OfARRXxC-YhiIb3ej4](https://transhealthproject.org/documents/34/Facial_surgery_medical_necessity_literature_review.pdf?fbclid=IwAR3k8TkEPJa4MDY1DIYoPqaopf8h9zTEV4Ani6IA7OfARRXxC-YhiIb3ej4)
- Medical necessity of chest reassignment surgery to treat gender dysphoria in transgender women, [https://transhealthproject.org/documents/28/MTF\\_chest\\_reassignment\\_literature\\_review.pdf](https://transhealthproject.org/documents/28/MTF_chest_reassignment_literature_review.pdf)
- Also: American College of Obstetricians and Gynecologists (ACOG), the World Medical Association (WMA), the American Medical Association (AMA), the Pediatric Endocrine Society, the Endocrine Society, the American Academy of Child & Adolescent Psychiatry (AACAP), the World Professional Association for Transgender Health (WPATH), the American Public Health Association (APHA) and the American Psychological Association

**Evidence that the financial costs of providing gender affirming care are nominal:**

- Johns Hopkins University, Study: Covering transgender health care would be cost-effective for insurance companies, <https://hub.jhu.edu/2015/12/03/transgender-health-insurance-cost-effective/> Overall, the budget impact for society would be minimal, researchers determined. They calculated that the costs would be fewer than two pennies per month for every person with health insurance coverage in the United States. The findings are published online in the Journal of General Internal Medicine.
- When the former president tried to ban trans veterans because gender affirming care would “cost too much” in 2016, [RAND responded with their analysis](#) and found that

the cost of covering trans care would be a fraction of a percent of health care expenditures.

- In one court case, (*The Boyden v. Conlin* involving the coverage for state employees in Wisconsin), an expert assessment found that the cost of coverage is "immaterial at 0.1% to 0.2% of the total cost of providing health insurance to state employees, even adopting defendants' cost estimation." (citation: *Boyden v. Conlin*, 341 F. Supp. 3d 979, 1000 (W.D. Wis. 2018).)
- [A consultant estimate for the state of NC employee health plan in 2016](#) also found that costs are only a fraction of a percent (0.011% to 0.027%) of the premium.
- [When Colorado updated their EHB Benchmark Plan to include gender affirming care](#), they found that a gender-affirming care mandate could increase benefits costs by about 0.04% and would cost an enrollee \$2.52 per year.

### **Insurers That Claim Increased Costs Due to Clarifying an Anti-Discrimination Law (Act 135) go Against the Medical Necessity Statute**

SB2835 SD1 is cost effective under HRS §432E-1.4, which says:

"Cost-effective" means a health intervention where the benefits and harms relative to the costs represent an economically efficient use of resources for patients with the medical condition being treated through the health intervention; provided that the characteristics of the individual patient shall be determinative when applying this criterion to an individual case.

Prohibiting categorical denials, as this bill requests, will allow for gender affirming care which prevents depression, suicidal ideation and promotes overall wellbeing.

Proposed amendments for SB2835 SD1,

1. Replace Page 4 lines 18-21, Page 5 lines 1-16, Page 9 lines 20-21 and Page 10 lines 1-18 with: "A health carrier may not apply categorical cosmetic or blanket exclusions to gender affirming treatment. When prescribed as medically necessary gender affirming treatment, a health carrier may not categorically exclude as cosmetic services facial feminization surgeries and other facial gender affirming treatment, such as tracheal shaves, hair electrolysis, smoking cessation and other care such as mastectomies, breast reductions, breast implants, electrolysis or laser hair removal, voice surgeries and therapies, or any combination of gender affirming procedures, including revisions to prior treatment."

2. Insert a new section before the definition section on pages 6 and 11 "Nothing in this section may be construed to mandate coverage of a service that is not medically necessary."

4. Insert new Section 8 on Pages 7 and 17, "This act shall be known and cited as the Gender Affirming Treatment Act."

DAVID Y. IGE  
GOVERNOR



HOLLY T. SHIKADA  
ATTORNEY GENERAL

VALERIE M. KATO  
FIRST DEPUTY ATTORNEY GENERAL

**STATE OF HAWAII**  
**DEPARTMENT OF THE ATTORNEY GENERAL**  
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January 18, 2022

The Honorable Chris Lee  
Senator, Twenty-Fifth District  
The Thirty-First Legislature  
State of Hawaii  
State Capitol, Room 216  
Honolulu, Hawaii 96813

Dear Senator Lee:

Re: Transgender Individuals' Access to Medical Care in Hawaii

In your letter dated December 1, 2021, you asked for an opinion from our office on two questions about whether two reports by the legislative auditor concerning the social and financial impact of mandated health insurance coverage are required by section 23-51, Hawaii Revised Statutes. Specifically, you asked:

- (1) Whether Senate Bill No. 752 (2021) is considered a health mandate that should trigger a "sunrise analysis" by the state auditor pursuant to sections 23-51 and -52, Hawaii Revised Statutes; and
- (2) Why Act 135, Session Law Hawaii 2016, was not considered a health mandate triggering a "sunrise analysis" pursuant to sections 23-51 and -52, Hawaii Revised Statutes.

We note that you raised these two questions in a request for an informal opinion by a letter dated September 1, 2021. Our answers here do not deviate substantially from the informal advice given by Andrea J. Armitage by letter dated September 23, 2021.

- (1) Whether Senate Bill No. 752 (2021) is considered a health mandate that should trigger a "sunrise analysis" by the state auditor pursuant to sections 23-51 and -52, Hawaii Revised Statutes.

Senate Bill No. 752 would amend sections 431:10A-118.3 and 432:1-607.3, Hawaii Revised Statutes (HRS). These two sections were added to their respective chapters of HRS by sections 2 and 4 of Act 135, 2016 Haw. Sess. Laws 447 and 449. Among other things, Senate Bill No. 752 would amend the medical necessity of any treatment in both sections to be in "accordance with the most recent edition of the Standards of Care for the Health of

Transsexual, Transgender, and Gender Nonconforming People, issued by the World Professional Association for Transgender Health.”

This amended definition of medical necessity could be construed as a mandate for new health insurance coverage of specific health services, specific diseases, or certain providers of health care services. However, subsection (d) of each of the two new sections provides, in part:

All health care services related to gender transition treatments shall be considered medically necessary and not cosmetic; provided the policy also provides coverage for those services when the services are offered for purposes other than gender transition (emphasis added), page 4, lines 13-17, and page 9, lines 7-11 of Senate Bill No. 752.

Although Senate Bill No. 752 lists fourteen health services that are to be considered among those health care services related to gender transition treatments, subsection (d) deems those services as being medically necessary only when the policy “provides coverage for those services when the services are offered for purposes other than gender transition.” The effect of subsection (d) is not to mandate specific health services but to prohibit discrimination against persons needing those health services for gender transition if those health services are otherwise covered by the policy when the health services are offered for purposes other than gender transition. As noted in the September 23 informal advice letter, “if a health insurance plan does not already cover ‘Laser hair removal’ services, Senate Bill No. 752 would not mandate the plan to do so for purposes of gender transition.”

As this bill does not require a new health mandate - it prohibits discrimination against persons needing the procedures and the reasons for needing the procedures - it does not trigger the requirement for a “sunrise analysis.”

(2) Why Act 135, Session Law Hawaii 2016, was not considered a health mandate triggering a “sunrise analysis” pursuant to sections 23-51 and -52, Hawaii Revised Statutes.

Act 135, 2016 Haw. Sess. Laws 447, enacted new sections 431-10A-118.3, 432:1-607.3, and 432D-26.3, HRS, that each prohibit discrimination “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.” Significantly, subsections (b)(4)(A) of the three then new sections included in discrimination the “[d]enying, 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 . . . .” (emphasis added). See Act 135, 2016 Haw. Sess. Laws 448, 449, and 450.

The Honorable Chris Lee

January 18, 2022

Page 3

The effect of Act 135's three subsections (b)(4)(A) is analogous to the two subsections (d) of Senate Bill No. 752--if certain health care services are covered by the policy, contract, plan, or agreement when the services are not related to gender transition, then it is unlawful to deny coverage for those certain health care services when they are related to gender transition. The effect of the subsections (b)(4)(A) is not to mandate specific health care services but to prohibit discrimination against persons who need those health care services for gender transition if those services are otherwise covered by the policy, contract, plan, or agreement when the health care services are not related to gender transition. As such, the requirement for a "sunrise analysis" is not triggered.

Very truly yours,

*Blair Goto*

Blair Goto  
Deputy Attorney General

APPROVED:



Holly T. Shikada  
Attorney General

Also, the legislature can waive sunrise analysis audits as you can see from the examples below:

1. Act 204, SLH 2016, which ensured that all insurers in the State provide insurance coverage for sexually transmitted disease screenings including screenings for human immunodeficiency virus and acquired immunodeficiency syndrome. In the Senate Committee on Commerce, Consumer Protection, and Health committee report on the Act, the Committee made the following declaration:

Finally, your Committee notes that after a discussion with the Department of the Attorney General, a clarifying amendment to this measure, which provides an exemption to an Auditor's report associated with new mandates for health insurance coverage, is necessary. Your Committee notes that since most health insurance plans in the State already provide insurance coverage for sexually transmitted disease screenings, an Auditor's report is unnecessary.

Accordingly, your Committee has amended this measure by:

(1) Clarifying that this measure shall be exempt from the requirement under section 23-51, Hawaii Revised Statutes...

Stand. Com. Rep. No. 3043, SLH 2016.

2. Act 168, SLH 2009, which mandated health insurance providers to provide health insurance coverage for all chemotherapy treatment, including orally administered chemotherapy, at the same copayment percentage or relative coinsurance amount as is applied to intravenously administered chemotherapy, exempted the mandate from an Auditor's review within the proposed statutory language ("Notwithstanding section 23-51, all individual and group accident and health or sickness insurance policies that include coverage or benefits for the treatment of cancer shall provide..."). The Senate Committees on Health and Commerce and Consumer Protection addressed the impact assessment requirement in their committee report:

Your Committees find that most insurers provide coverage for chemotherapy treatments. Therefore, the need for an Auditor's impact assessment report is unnecessary...

Accordingly, your Committees have amended this measure by...

(2) Excluding the provisions of this Act from section 23-51 which requires an Auditor's impact assessment report...

Stand. Com. Rep. No. 573, SLH 2009.

3. A health insurance mandate that was enacted in 2000 with neither a sunrise review nor an exemption. Act 243 required coverage of outpatient diabetes treatment and the legislation



was not first assessed by the Auditor. One version of the bill (H.D. 2) added the following exemption however it was later removed from the final version:

Notwithstanding sections 23-51 and 23-52, Hawaii Revised Statutes, or any other law to the contrary, it shall not be necessary for the legislature to pass concurrent resolutions requesting the auditor to prepare and submit an impact assessment report on providing coverage for outpatient diabetes self-management training, education, equipment, and supplies for this Act.



National Center for Transgender Equality  
1032 15th Street NW #199;  
Washington, DC 20005

Transgender Law Center  
PO Box 70976  
Oakland, CA 94612-0976

April, 27, 2021

Colin M. Hayashida  
Insurance Commissioner  
Department of Commerce and Consumer Affairs  
King Kalakaua Building  
335 Merchant Street, Rm. 213  
Honolulu, Hawaii 96813

cc: Hawaii Medical Service Association (HMSA)  
818 Ke'eaumoku St,  
Honolulu, HI 96814

Dear Mr. Hayashida,

We, the National Center for Transgender Equality and Transgender Law Center, write to request you ensure that transition-related care, including surgical treatments such as breast augmentation, is deemed medically necessary care for many transgender people and therefore subject to Hawai'i's insurance nondiscrimination laws enacted in 2016 (§ [431:10A-118.3](#) & § [432D-26.3](#)) and the Patient Protection and Affordable Care Act, section 1557a (**42 U.S.C. 18116**). Refusal or failure to cover medically necessary transition-related care is discrimination on the basis of actual gender identity and on the basis of sex. The National Center for Transgender Equality (NCTE) is one of the nation's leading social justice organizations working for life-saving change for transgender people at the federal, state and local level. We believe in the critical importance of eliminating health disparities and ensuring that all people, transgender individuals and their families, do not face discriminatory barriers when seeking quality, affordable health coverage and care. Transgender Law Center (TLC) is the largest national trans-led organization advocating for a world in which all people are free to define themselves and their futures.



Grounded in legal expertise and committed to racial justice, TLC employs a variety of community-driven strategies to keep transgender and gender nonconforming people alive, thriving, and fighting for liberation.

### **Transition-related care, including surgical care, is medically necessary and lowers suicidal ideation and alleviates negative mental health symptoms for transgender populations**

There is an overwhelming and growing consensus among major medical organizations—including the American College of Obstetricians and Gynecologists (ACOG)<sup>1</sup>, the World Medical Association (WMA)<sup>2</sup>, the American Medical Association (AMA)<sup>3</sup>, the Pediatric Endocrine Society<sup>4</sup>, the Endocrine Society<sup>5</sup>, the American Academy of Child & Adolescent Psychiatry (AACAP)<sup>6</sup>, the World Professional Association for Transgender Health (WPATH)<sup>7</sup>, the American Public Health Association (APHA)<sup>8</sup> and the American Psychological Association (APA)<sup>9</sup>—that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary and should be fully covered by patients’ insurance. The broad medical support is directly influenced by robust research literature,

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<sup>1</sup> ACOG. (2021). ACOG Releases Guidance on Health Care for Transgender and Gender Diverse Individuals. Retrieved from <https://www.acog.org/news/news-releases/2021/02/acog-guidance-health-care-for-transgender-gender-diverse-in-dividuals>

<sup>2</sup> WMA. (2020). WMA - The World Medical Association-WMA Statement on Transgender People. Retrieved from <https://www.wma.net/policies-post/wma-statement-on-transgender-people/>

<sup>3</sup> AMA. (2019). Health insurance coverage for genderaffirming care of transgender patients (Issue brief). Retrieved from <https://www.ama-assn.org/system/files/2019-03/transgender-coverage-issue-brief.pdf>

<sup>4</sup> Hembree, W. C., Cohen-Kettenis, P. T., Gooren, L., Hannema, S. E., Meyer, W. J., Murad, M. H., ... & T’Sjoen, G. G. (2017). Endocrine treatment of gender-dysphoric/gender-incongruent persons: an endocrine society clinical practice guideline. *The Journal of Clinical Endocrinology & Metabolism*, 102(11), 3869-3903.

<sup>5</sup> Endocrine Society. (2020). Transgender Health. Retrieved from <https://www.endocrine.org/advocacy/position-statements/transgender-health>

<sup>6</sup> American Academy of Child & Adolescent Psychiatry. (2019). AACAP Statement Responding to Efforts to ban Evidence-Based Care for Transgender and Gender Diverse Youth. Retrieved from [https://www.aacap.org/AACAP/Latest\\_News/AACAP\\_Statement\\_Responding\\_to\\_Efforts-to\\_ban\\_Evidence-Based\\_Care\\_for\\_Transgender\\_and\\_Gender\\_Diverse.aspx](https://www.aacap.org/AACAP/Latest_News/AACAP_Statement_Responding_to_Efforts-to_ban_Evidence-Based_Care_for_Transgender_and_Gender_Diverse.aspx)

<sup>7</sup> Coleman, E., Bockting, W., Botzer, M., Cohen-Kettenis, P., DeCuypere, G., Feldman, J., ... & Zucker, K. (2012). Standards of care for the health of transsexual, transgender, and gender-nonconforming people, version 7. *International journal of transgenderism*, 13(4), 165-232.

<sup>8</sup> Promoting Transgender and Gender Minority Health through Inclusive Policies and Practices. (2016). Retrieved from <https://apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2017/01/26/promoting-transgender-and-gender-minority-health-through-inclusive-policies-and-practices>

<sup>9</sup> Anton, B. S. (2009). Proceedings of the American Psychological Association for the legislative year 2008: Minutes of the annual meeting of the Council of Representatives. *American Psychologist*, 64, 372–453. doi:10.1037/a0015932



spanning decades, on transition-related care and its beneficial impacts within the transgender community. Specifically, the literature review suggests that gender-affirming and transition-related care services are significantly associated with improvements on mental health outcome measures such as the reduction of suicidal ideation, depression and anxiety.<sup>10</sup> Furthermore, many studies have found that transition-related surgical treatments were significantly associated with higher levels of body satisfaction, self-esteem and quality of life.<sup>11</sup>

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<sup>10</sup> Keo-Meier C, Herman LI, Reisner SL, Pardo ST, Sharp C, & Babcock JC (2015). Testosterone treatment and MMPI-2 improvement in transgender men: A prospective controlled study. *Journal of Consulting and Clinical Psychology*, 83(1), 143–156. doi:10.1037/a0037599; Wilson, E. C., Chen, Y. H., Arayasirikul, S., Wenzel, C., & Raymond, H. F. (2015). Connecting the dots: examining transgender women’s utilization of transition-related medical care and associations with mental health, substance use, and HIV. *Journal of Urban Health*, 92(1), 182-192.; Mueller, S. C., De Cuypere, G., & T’Sjoen, G. (2017). Transgender research in the 21st century: a selective critical review from a neurocognitive perspective. *American Journal of Psychiatry*, 174(12), 1155-1162.; Valentine, S. E., & Shipherd, J. C. (2018). A systematic review of social stress and mental health among transgender and gender non-conforming people in the United States. *Clinical Psychology Review*, 66, 24-38.; Beckwith, N., Reisner, S. L., Zaslowsky, S., Mayer, K. H., & Keuroghlian, A. S. (2017). Factors associated with gender-affirming surgery and age of hormone therapy initiation among transgender adults. *Transgender health*, 2(1), 156-164.; Tucker, R. P., Testa, R. J., Simpson, T. L., Shipherd, J. C., Blosnich, J. R., & Lehavot, K. (2018). Hormone therapy, gender affirmation surgery, and their association with recent suicidal ideation and depression symptoms in transgender veterans. *Psychological medicine*, 48(14), 2329-2336.

<sup>11</sup> van de Grift, T. C., Elaut, E., Cerwenka, S. C., Cohen-Kettenis, P. T., Cuypere G. D., Richter-Appelt, H., & Kreukels, B.P. (2017). Effects of medical interventions on gender dysphoria and body image. *Psychosomatic Medicine*, 79(7), 815-823, <https://www.ncbi.nlm.nih.gov/pubmed/28319558> (longitudinal study finding substantially lower rates of gender dysphoria, psychological symptoms, and body dissatisfaction after surgical or hormone treatment); Owen-Smith, A.A., Gerth, J, Sineath R.C., Brazilay, J., et al. (2018). Association between gender confirmation treatments and perceived gender congruence, body image satisfaction, and mental health in a cohort of transgender individuals. *Journal of Sexual Medicine*, 15(4), 591-600. <https://www.ncbi.nlm.nih.gov/pubmed/29463478> (finding that transition-related care, including surgical care, is associated with substantially higher self-esteem and lower levels of depression and anxiety); Nelson, L., Whallett, E., & McGregor, J. (2009). Transgender patient satisfaction following reduction mammoplasty. *Journal of Plastic, Reconstructive & Aesthetic Surgery* 62(3), 331-334 (reduction mammoplasty for transgender people associated with high patient satisfaction and improved quality of life); Parola, N., Bonierbale, M., Lemaire, A., Aghababian, V., Michel, A., & Lançon, C. (2010). Study of quality of life for transsexuals after hormonal and surgical reassignment. *Sexologies*, 19(1), 24-28 (finding improved quality of life among patients after surgery); Ruppin, U. & Pfäfflin, Friedemann. (2015). Long-Term Follow-Up of Adults with Gender Identity Disorder. *Archives of Sexual Behavior*, 44(5), 1321-1329 (study of 71 transgender people 10 or more years after a legal name change, finding that participants showed significantly fewer psychological and interpersonal problems and a substantially increased life satisfaction at follow-up than at the time of the initial consultation); Ainsworth, T. A. & Spiegel, J. H. (2010). Quality of life of individuals with and without facial feminization surgery or gender reassignment surgery. *Quality of Life Research*, 19(7), 1019-1024. <https://www.ncbi.nlm.nih.gov/pubmed/20461468> (finding that transgender women who had received genital and/or facial surgery had higher mental health-related quality of life than transgender women who had not received either surgery); Papadopoulos, N. A., Zavlin, D., Lellé, J., Henrich, G., et al. (2017). Male-to-female sex reassignment surgery using the combined technique leads to increased quality of life in a prospective study. *Plastic and Reconstructive Surgery*, 140(2), 286-294 (prospective study found improved psychological symptoms and quality of life after surgery, compared to patients’ baseline preoperative responses).



**Breast augmentation (along with other surgical treatments) is often medically necessary and routinely denying coverage violates Hawai'i's insurance nondiscrimination laws enacted in 2016 (§ [431:10A-118.3](#) & § [432D-26.3](#))**

HMSA's 'Gender Identity Services' policy<sup>12</sup> does not specifically exclude transition-related care; however, breast augmentation (along with other surgical treatments) when performed to treat gender dysphoria are labeled as presumptively cosmetic in direct violation of the law. HMSA covers breast augmentation (along with other surgical treatments) when performed to treat other conditions without placing a 'presumptively cosmetic' limitation on coverage<sup>13</sup>. When HMSA, or any other insurance carrier, defines transition-related care as presumptively cosmetic and requires transgender patients and their doctors to overcome such a presumption in order to have care recognized as medically necessary and therefore covered, transgender people are not equally able to access insurance coverage—their coverage for services is limited on the basis of actual gender identity. In the case of HMSA, this limitation is clear when the standard for receiving transition-related breast augmentation is compared with the standard for receiving the same service when not transition-related. HMSA further clarifies its limitation on transition-related care in its Cosmetic and Reconstructive Surgery and Services policy which states, “[c]osmetic services are medical and nonmedical services that . . . are prescribed for psychological or psychiatric reasons.”<sup>14</sup> Commissioner, we urge you to clearly affirm that transition-related care, including surgical treatments, is medically necessary for many transgender people and cannot be subject to any presumptively cosmetic limitations.

**Violations of Hawai'i's insurance nondiscrimination laws enacted in 2016 (§ [431:10A-118.3](#) & § [432D-26.3](#)) are likely violations of federal law including the Patient Protection and Affordable Care Act, section 1557a ([42 U.S.C. 18116](#))**

Placing limitations on health care specific to transgender Hawai'i residents not only violates state law, it also runs afoul of the Affordable Care Act's nondiscrimination provisions ([42 U.S.C. § 18116](#)). The Affordable Care Act sought to expand insurance coverage to as many people as possible. One strategy to expand coverage was to protect patients from discrimination, including discrimination on the basis of sex. Federal courts and the Obama administration interpreted the sex discrimination prohibited by the Affordable Care Act to include discrimination on the basis of transgender status. In addition, on his first day in office, President Biden required all federal

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<sup>12</sup> HMSA. Gender Identity Services. Retrieved from [https://hmsa.com/portal/provider/MM.06.026\\_Gender\\_Identity\\_Services.pdf](https://hmsa.com/portal/provider/MM.06.026_Gender_Identity_Services.pdf)

<sup>13</sup> HMSA. Cosmetic and Reconstructive Surgery and Services. Retrieved from [https://hmsa.com/portal/provider/MM.10.001\\_Cosmetic\\_and\\_Reconstructive\\_Surgery\\_and\\_Services.pdf](https://hmsa.com/portal/provider/MM.10.001_Cosmetic_and_Reconstructive_Surgery_and_Services.pdf)

<sup>14</sup> HMSA. Cosmetic and Reconstructive Surgery and Services. Retrieved from [https://hmsa.com/portal/provider/MM.10.001\\_Cosmetic\\_and\\_Reconstructive\\_Surgery\\_and\\_Services.pdf](https://hmsa.com/portal/provider/MM.10.001_Cosmetic_and_Reconstructive_Surgery_and_Services.pdf)



departments and agencies, including the Department of Health and Human Services (HHS), to review their regulations and policies to ensure each fully implemented the Supreme Court’s decision in Bostock v Clayton County.<sup>15 16</sup>

## **Conclusion**

It is discriminatory and wrong to single out any group and deny them access to medically necessary care. Putting limitations on medically necessary transition-related surgical treatments negatively impacts the health of so many transgender Hawai’i residents and in some cases puts their lives at risk. We request the Commissioner use his authority to ensure that transition-related care is deemed medically necessary and not subject to limitations not placed on the same services when provided for other reasons. HMSA, and every other insurance carrier must provide coverage for medically necessary and appropriate care to all Hawai’i residents in a nondiscriminatory manner.

To place ‘presumptively cosmetic’ limitations on transition-related surgical treatments, such as breast augmentation, goes against the overwhelming consensus of medical experts and recognized treatment protocols for gender dysphoria. Such limitations are discriminatory and deny access to lifesaving care for many transgender Hawai’i residents. Routine denial of care negatively impacts the mental and physical health of the transgender community— and in some cases places lives at risk.

As the Hawai’i Insurance Commissioner, we ask that you protect the health of all transgender residents of Hawai’i, fully enforce Hawai’i’s insurance nondiscrimination laws, and affirm that all transition-related care, including surgical treatment, is medically necessary.

Sincerely,

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<sup>15</sup> *Bostock v. Clayton County*, 140 S. Ct. 1731, [590 U.S.](#) \_\_\_\_ (2020).

<sup>16</sup> Executive Order 13988 of Jan 20, 2021: [Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation](#).



D. Ojeda  
Policy Advocate  
National Center for Transgender Equality

Ian Anderson  
Legal Services Project Manager  
Transgender Law Center

**Medical Necessity -**

[https://www.capitol.hawaii.gov/hrscurrent/Vol09\\_Ch0431-0435H/HRS0432E/HRS\\_0432E-001\\_0004.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol09_Ch0431-0435H/HRS0432E/HRS_0432E-001_0004.htm)

§432E-1.4 Medical necessity. (a) **For contractual purposes, a health intervention shall be covered if it is an otherwise covered category of service, not specifically excluded, recommended by the treating licensed health care provider, and determined by the health plan's medical director to be medically necessary as defined in subsection (b).** A health intervention may be medically indicated and not qualify as a covered benefit or meet the definition of medical necessity. A managed care plan may choose to cover health interventions that do not meet the definition of medical necessity.

(b) A health intervention is medically necessary if it is recommended by the treating physician or treating licensed health care provider, is approved by the health plan's medical director or physician designee, and is:

(1) For the purpose of treating a medical condition;

(2) The most appropriate delivery or level of service, considering potential benefits and harms to the patient;

**(3) Known to be effective in improving health outcomes; provided that:**

**(A) Effectiveness is determined first by scientific evidence;**

**(B) If no scientific evidence exists, then by professional standards of care; and**

**(C) If no professional standards of care exist or if they exist but are outdated or contradictory, then by expert opinion; and**

**(4) Cost-effective for the medical condition being treated compared to alternative health interventions, including no intervention. For purposes of this paragraph, cost-effective shall not necessarily mean the lowest price.**

(c) When the treating licensed health care provider and the health plan's medical director or physician designee do not agree on whether a health intervention is medically necessary, a reviewing body, whether internal to the plan or external, shall



give consideration to, but shall not be bound by, the recommendations of the treating licensed health care provider and the health plan's medical director or physician designee.

**(d) For the purposes of this section:**

**"Cost-effective" means a health intervention where the benefits and harms relative to the costs represent an economically efficient use of resources for patients with the medical condition being treated through the health intervention; provided that the characteristics of the individual patient shall be determinative when applying this criterion to an individual case.**

"Effective" means a health intervention that may reasonably be expected to produce the intended results and to have expected benefits that outweigh potential harmful effects.

"Health intervention" means an item or service delivered or undertaken primarily to treat a medical condition or to maintain or restore functional ability. A health intervention is defined not only by the intervention itself, but also by the medical condition and patient indications for which it is being applied. New interventions for which clinical trials have not been conducted and effectiveness has not been scientifically established shall be evaluated on the basis of professional standards of care or expert opinion. For existing interventions, scientific evidence shall be considered first and, to the greatest extent possible, shall be the basis for determinations of medical necessity. If no scientific evidence is available, professional standards of care shall be considered. If professional standards of care do not exist or are outdated or contradictory, decisions about existing interventions shall be based on expert opinion. Giving priority to scientific evidence shall not mean that coverage of existing interventions shall be denied in the absence of conclusive scientific evidence. Existing interventions may meet the definition of medical necessity in the absence of scientific evidence if there is a strong conviction of effectiveness and benefit expressed through up-to-date and consistent professional standards of care, or in the absence of such standards, convincing expert opinion.

"Health outcomes" mean outcomes that affect health status as measured by the length or quality of a patient's life, primarily as perceived by the patient.

"Medical condition" means a disease, illness, injury, genetic or congenital defect, pregnancy, or a biological or psychological condition that lies outside the range of normal, age-appropriate human variation.

"Physician designee" means a physician or other health care practitioner designated to assist in the decision-making process

who has training and credentials at least equal to the treating licensed health care provider.

"Scientific evidence" means controlled clinical trials that either directly or indirectly demonstrate the effect of the intervention on health outcomes. If controlled clinical trials are not available, observational studies that demonstrate a causal relationship between the intervention and the health outcomes may be used. Partially controlled observational studies and uncontrolled clinical series may be suggestive, but do not by themselves demonstrate a causal relationship unless the magnitude of the effect observed exceeds anything that could be explained either by the natural history of the medical condition or potential experimental biases. Scientific evidence may be found in the following and similar sources:

- (1) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff;
- (2) Peer-reviewed literature, biomedical compendia, and other medical literature that meet the criteria of the National Institutes of Health's National Library of Medicine for indexing in Index Medicus, Excerpta Medicus (EMBASE), Medline, and MEDLARS database Health Services Technology Assessment Research (HSTAR);
- (3) Medical journals recognized by the Secretary of Health and Human Services under section 1861(t)(2) of the Social Security Act, as amended;
- (4) Standard reference compendia including the American Hospital Formulary Service-Drug Information, American Medical Association Drug Evaluation, American Dental Association Accepted Dental Therapeutics, and United States Pharmacopoeia-Drug Information;
- (5) Findings, studies, or research conducted by or under the auspices of federal agencies and nationally recognized federal research institutes including but not limited to the Federal Agency for Health Care Policy and Research, National Institutes of Health, National Cancer Institute, National Academy of Sciences,

Centers for Medicare and Medicaid Services,  
Congressional Office of Technology  
Assessment, and any national board  
recognized by the National Institutes of  
Health for the purpose of evaluating the  
medical value of health services; and  
(6) Peer-reviewed abstracts accepted for  
presentation at major medical association  
meetings.

"Treat" means to prevent, diagnose, detect, provide medical  
care, or palliate.

"Treating licensed health care provider" means a licensed  
health care provider who has personally evaluated the patient.  
[L 2000, c 250, §8; am L 2011, c 43, §18]

**SB-2835-SD-1**

Submitted on: 2/25/2022 8:50:32 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Shanda Lewis	Individual	Support	No

Comments:

Dear Chair Rhoads, Vice Chair Keohokalole, and Honorable Members of the Committee:

I strongly support SB 2835 SD1 which clarifies the language on the transgender anti-discrimination health insurance law (Act 135, 2016) to ensure the prohibition of categorical denials of gender affirming treatments/surgeries and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary (not cosmetic) and should be covered by transgender patients' insurance. Without insurance coverage of these medically necessary procedures, trans lives are put at risk for depression and suicidal ideation.

Importantly, research exists (for example from the City of San Francisco) demonstrating that covering transition related health care services does NOT impose an undue financial burden on insurance companies nor the municipalities or companies they service.

Please make sure that insurance companies are not ignoring the majority of medical opinion and Act 135 by forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) by passing this bill.

Thank you for investing in the health and safety of our māhū and trans community members!

Sincerely,

Shanda Lewis

**SB-2835-SD-1**

Submitted on: 2/25/2022 9:03:45 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
GABRIELLA LOPEZ	Individual	Support	No

Comments:

Dear Chair Rhoads, Vice Chair Keohokalole, and Honorable Members of the Committee:

I strongly support SB 2835 SD1 which clarifies the language on the transgender anti-discrimination health insurance law (Act 135, 2016) to ensure the prohibition of categorical denials of gender affirming treatments/surgeries and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary (not cosmetic) and should be covered by transgender patients' insurance. Without insurance coverage of these medically necessary procedures, trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and Act 135 by forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) by passing this bill.

Thank you for investing in the health and safety of our māhū and trans community members!

Sincerely,  
Gabriella Lopez

**SB-2835-SD-1**

Submitted on: 2/25/2022 9:29:02 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Cathy Kapua	Individual	Support	No

Comments:

Dear Chair Rhoads, Vice Chair Keohokalole, and Honorable Members of the Committee:

I strongly support SB 2835 SD1 which clarifies the language on the transgender anti-discrimination health insurance law (Act 135, 2016) to ensure the prohibition of categorical denials of gender affirming treatments/surgeries and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary (not cosmetic) and should be covered by transgender patients' insurance. Without insurance coverage of these medically necessary procedures, trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and Act 135 by forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) by passing this bill.

Thank you for investing in the health and safety of our māhū and trans community members!

Sincerely,

Cathy Kapua

**SB-2835-SD-1**

Submitted on: 2/25/2022 10:00:29 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Tiare Sua	Individual	Support	No

Comments:

Dear Chair Rhoads, Vice Chair Keohokalole, and Honorable Members of the Committee:

I strongly support SB 2835 SD1 which clarifies the language on the transgender anti-discrimination health insurance law (Act 135, 2016) to ensure the prohibition of categorical denials of gender affirming treatments/surgeries and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary (not cosmetic) and should be covered by transgender patients' insurance. Without insurance coverage of these medically necessary procedures, trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and Act 135 by forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) by passing this bill.

Thank you for investing in the health and safety of our māhū and trans community members!

Sincerely,

Tiare Anelaokalani Kima Sua

**SB-2835-SD-1**

Submitted on: 2/25/2022 10:01:01 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Jessica Redford	Individual	Support	No

Comments:

Dear Chair Rhoads, Vice Chair Keohokalole, and Honorable Members of the Committee:

I strongly support SB 2835 SD1 which clarifies the language on the transgender anti-discrimination health insurance law (Act 135, 2016) to ensure the prohibition of categorical denials of gender affirming treatments/surgeries and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary (not cosmetic) and should be covered by transgender patients' insurance. Without insurance coverage of these medically necessary procedures, trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and Act 135 by forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) by passing this bill.

Thank you for investing in the health and safety of our māhū and trans community members!

Sincerely,

Jessica Redford



**SB-2835-SD-1**

Submitted on: 2/25/2022 10:54:25 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Sina Sison	Individual	Support	No

Comments:

Dear Chair Rhoads, Vice Chair Keohokalole, and Honorable Members of the Committee:

I strongly support SB 2835 SD1 which clarifies the language on the transgender anti-discrimination health insurance law (Act 135, 2016) to ensure the prohibition of categorical denials of gender affirming treatments/surgeries and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary (not cosmetic) and should be covered by transgender patients' insurance. Without insurance coverage of these medically necessary procedures, trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and Act 135 by forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) by passing this bill.

Thank you for investing in the health and safety of our māhū and trans community members!

Sincerely,

Sina Sison

**SB-2835-SD-1**

Submitted on: 2/25/2022 11:10:08 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Stacia Ohira	Individual	Support	No

Comments:

Aloha Chair, Co-Chair, and Committee members-

My name is Stacia Ohira and I am writing to you in regards to SB 2835 SD1. I am in full support of this bill as it saves lives of individuals affected by this. This bill not only saves the lives of the individuals who are struggling to get medical insurance but it also enhances the lives to help individuals achieve normalcy in their lives. Currently I pay into my medical insurance and its helping me to receive the medical treatment that I need in order to continue to live a life of normalcy and staying gainfully employed. If this universal healthcare is not available to me in essence I will be paying into a health fund that I can not use for my needs. Receiving the medical care that I need keeps me gainfully employed and a tax paying citizen by keeping my normalcy alive. I am able to be happy and live in my own skin because I currently receive medical benefits that I need.

I beg of you to please support this bill as this bill will keep many individuals "above" water and striving and paying into our tax funds through being gainfully employed because of their ability to feel comfortable in their own skins. The consequences of this bill failing will be horrible and many of the individuals who are thriving will slowly fade away back into the darkness of our society.

Thank you for your time and for your support.

**SB-2835-SD-1**

Submitted on: 2/25/2022 11:13:49 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Linda Kim	Individual	Support	No

Comments:

Dear Chair Rhoads,

Vice Chair Keohokalole,

and Honorable Members of the Committee:

I strongly support SB 2835 SD1 which clarifies the language on the transgender anti-discrimination health insurance law (Act 135, 2016) to ensure the prohibition of categorical denials of gender affirming treatments/surgeries and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary (not cosmetic) and should be covered by transgender patients' insurance. Without insurance coverage of these medically necessary procedures, trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and Act 135 by forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) by passing this bill.

Thank you for investing in the health and safety of our māhū and trans community members!

Sincerely,

Linda Kim, APRN

**SB-2835-SD-1**

Submitted on: 2/25/2022 11:20:32 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Erin Furuichi	Individual	Support	No

Comments:

Dear Chair Rhoads, Vice Chair Keohokalole, and Honorable Members of the Committee:

I strongly support SB 2835 SD1 which clarifies the language on the transgender anti-discrimination health insurance law (Act 135, 2016) to ensure the prohibition of categorical denials of gender affirming treatments/surgeries and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary (not cosmetic) and should be fully covered by transgenderpatients' insurance. Without insurance coverage of these medically necessary procedures trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and Act 135 by forming their own internal that ignore the law and medical necessity of gender-affirming care by passing this bill.

Thank you for investing in the health and safety of our māhū and trans community members!

Sincerely,

Erin Furuichi



**SB-2835-SD-1**

Submitted on: 2/25/2022 11:28:08 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Shalani Placencia	Individual	Support	No

Comments:

Dear Chair Rhoads, Vice Chair Keohokalole, and Honorable Members of the Committee:

I strongly support SB 2835 SD1 which clarifies the language on the transgender anti-discrimination health insurance law (Act 135, 2016) to ensure the prohibition of categorical denials of gender affirming treatments/surgeries and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary (not cosmetic) and should be covered by transgender patients' insurance. Without insurance coverage of these medically necessary procedures, trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and Act 135 by forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) by passing this bill.

Thank you for investing in the health and safety of our māhū and trans community members!

Sincerely,

Shalani Placencia

**SB-2835-SD-1**

Submitted on: 2/25/2022 2:12:24 PM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Danielle Sato	Individual	Support	No

Comments:

Dear Chair Rhoads, Vice Chair Keohokalole, and Honorable Members of the Committee:

My name is Danielle Sato, and I am submitted testimony as a medical student who strongly supports SB 2835 SD1 which clarifies the language on the transgender anti-discrimination health insurance law (Act 135, 2016) to ensure the prohibition of categorical denials of gender affirming treatments/surgeries and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary (not cosmetic) and should be covered by transgender patients' insurance. Without insurance coverage of these medically necessary procedures, trans lives are at risk for depression, suicidal ideation, and a variety of other health conditions.

Please make sure that insurance companies are not ignoring the majority of medical opinion and Act 135 by forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) by passing this bill.

Mahalo nui for your commitment to the health and safety of our māhū and trans community members.

**SB-2835-SD-1**

Submitted on: 2/25/2022 4:54:32 PM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Maddalynn Seseapasara	Individual	Support	No

Comments:

Aloha,

Proposed amendments for SB2835 SD1,

1. Replace Page 4 lines 18-21, Page 5 lines 1-16, Page 9 lines 20-21 and Page 10 lines 1-18 with: "A health carrier may not apply categorical cosmetic or blanket exclusions to gender affirming treatment. When prescribed as medically necessary gender affirming treatment, a health carrier may not categorically exclude as cosmetic services facial feminization surgeries and other facial gender affirming treatment, such as tracheal shaves, hair electrolysis, smoking cessation and other care such as mastectomies, breast reductions, breast implants, electrolysis or laser hair removal, voice surgeries and therapies, or any combination of gender affirming procedures, including revisions to prior treatment."
2. Insert a new section before the definition section on pages 6 and 11 "Nothing in this section may be construed to mandate coverage of a service that is not medically necessary."
4. Insert new Section 8 on Pages 7 and 17, "This act shall be known and cited as the Gender Affirming Treatment Act."

With aloha,

Maddalynn Seseapasara

Pronouns: she/her



**To:** Mr. Karl Rhoads, Chair  
Mr. Jarrett Keohokalole, Vice Chair  
& Members of the Senate Committee on Judiciary

**Subject:** SB2835, SD1 RELATING TO INSURANCE

Date: March 1, 2022

Time: 9:30am

Location: Videoconference

**Position:** IN SUPPORT

Aloha Chair Rhoads, Vice Chair Keohokalole, and members of the committee,

My name is Kaya Arakaki-Mineshima and I am writing to you today as a concerned citizen testifying in favor of SB2835, SD1. This bill aims to require health insurance companies to provide greater transparency regarding clearer information on policy coverage on gender transition treatments and prohibiting discrimination on the basis of gender identity. The proposed bill, if enacted, would improve access to healthcare for the LGBTQIA+ population, specifically the transgender community. This community has been historically known to be discriminated against in many social structures, especially in our healthcare system.

As an individual who is connected to many families, friends, and peers who identify with the LGBTQIA+ community, I stand as an ally and advocate to improve the health, well-being, and access to appropriate healthcare for them. I have seen my hānai brother referred to a number of mental health professionals as an attempt to help him “navigate” through his identity, yet, their current insurance and access have continued to deny and dismiss their efforts that would further support their transition. I firmly believe that SB2835 would significantly aid in eliminating several barriers to access while also providing support and reducing discrimination among this group.

We can recognize and understand that there are still many obstacles connected to health insurance that is preventing accessible and quality care for transgender patients.

- Transgender people are **frequently denied insurance coverage** for treatments that are routinely covered for cisgender (nontransgender) women (Learmonth et al, 2018).
- The American College of Physicians (2015) recommends that all health insurance plans include comprehensive transgender healthcare services and **provide coverage to these services as they would to any other beneficiary.**

I support the implementation of SB2835, as it will provide great benefit in improving Hawai'i's healthcare system as a whole as well as providing better, more proficient healthcare and needed access for our transgender community.

Mahalo nui loa for your time and consideration,  
Kaya Arakaki-Mineshima  
Waipahu, HI

**SB-2835-SD-1**

Submitted on: 2/26/2022 8:24:46 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Leimomi Khan	Individual	Support	No

Comments:

Support. SB2835, SD1 that rohibits health insurance companies from denying coverage on the basis of gender identity if the policy covers the treatment for purposes other than gender transition. Requires insurance companies 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.

The current gaps in our health care system leave people open to exploitation, inferior medical care, and debilitating stress. As a Native Hawaiian, I wish to echo the comments expressed by the One Single Rainbow Connection LLC that "passage of this bill would be a step toward healing just a small amount of historical trauma for the state's kānaka 'ōiwi, kānaka maoli, and Hawai'i maoli, as well as affording inclusivity to a large community in dire need."

**SB-2835-SD-1**

Submitted on: 2/27/2022 6:45:23 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Shayna	Individual	Support	No

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole, and Honorable Members of the Committee:

I strongly support SB2835 SD1 which clarifies the language on the transgender anti-discrimination health insurance law (Act 135, 2016) to ensure the prohibition of categorical denials of gender affirming treatments/surgeries and requires insurance companies in Hawai'i to post their policies. Please make sure the language is stronger so that it prohibits insurance companies from categorically denying gender affirming care.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary (not cosmetic) and should be covered by transgender patients' insurance. Without insurance coverage of these medically necessary procedures, trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and Act 135 by forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) by passing this bill.

Thank you for investing in the health and safety of our māhū and trans community members!

**SB-2835-SD-1**

Submitted on: 2/27/2022 10:12:00 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Renee Rabb	Individual	Support	No

Comments:

I support SB2835 which would prohibit insurance companies from denying coverage of procedures to transgendered people if they cover the procedure for other people. Whether or not a person needs a medical procedure should be determined by the person and their doctors, not by insurance companies.

Renee Rabb

Keaau, HI

Dear Chair Rhoads, Vice Chair Keohokalole, and members of the committee,

I am sending my strong support for SB 2835 from Honolulu. As a transgender man, I have experienced discriminatory health insurance practices. The impact of this kind of discrimination extends beyond the denial of coverage.

When I was a PhD candidate in a program that provided all graduate students with the same health insurance, I was disadvantaged purely for being transgender. A classmate and I both pursued mastectomies, hers as preventative care from high breast cancer risk, and mine for gender transition. Even though we were getting the same surgery and had the same insurance plan, we had different levels of insurance coverage and we were treated differently. Upon learning that I would be denied coverage for a surgical revision, my surgeon elected to use a more invasive ‘one-and-done’ method, which carried greater potential for scarring on my chest. My friend was covered for two revisions, so her surgeon was able to make decisions without worrying about insurance coverage. After surgery, my friend was able to receive important additional treatments for recovery such as scar care and physical therapy. I was denied coverage for these things. Watching someone else access insurance-covered care that I also needed, but was denied coverage for, took a toll on my mental health and sense of self worth.

When insurance companies ignore the growing consensus of major medical organizations that gender-affirming care is medically necessary, they prop up the false notion that gender transition is a self-inflicted, unnecessary hardship. This belief was widespread in my graduate program, and the entirely different attitudes that the department held towards my classmate’s and my situation created a toxic environment that contributed to my departure.

Discriminatory practices in health care are reckless, both because they deny life-saving medical treatment, and because they send a message that trans people don’t need or deserve medically necessary care. Such practices are equally unscientific and cruel.

Lastly, as seen in the letter from the Office of the Attorney General included in previous testimony, this bill does not trigger a “sunrise analysis”, it merely rectifies existing injustice.

Sincerely,

Jordan Fleming  
he/him/his

**SB-2835-SD-1**

Submitted on: 2/27/2022 1:04:03 PM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Hannah Matsunaga	Individual	Support	No

Comments:

Aloha,

My name is Hannah Matsunaga, I'm a Honolulu resident, and I strongly support SB 2835.

As the rights of transgender people are under attack in Texas, Florida, and elsewhere on the continent, Hawaii has an opportunity to be an example of equal dignity under the law.

I hope we take this opportunity and pass common sense anti-discrimination laws. No one should be denied healthcare coverage simply because of their gender identity.

Indeed, because of the high cost of healthcare, denial of insurance coverage is often essentially denial of care. Insurance companies should not have the power to interfere with what doctors and other healthcare providers consider medically necessary for their patients. Preventing insurance discrimination keeps medical decisions about medicine instead of letting them be about bias or profit.

Mahalo for your time and consideration.

Aloha respectable members of The Hawaii State Senate,

My name is Sarah Dubai and I am a 20-year military veteran living in this state since 2019. I hold value in the passing of this bill because one, I am transgender, and two, I retire in May with plans of staying here. For those reasons I am in support of SB2835 SD1.

It's too easy to sit here and say how important obtaining health coverage for transgender individuals like myself would be. To deny someone medical treatment that can lead to a better life would be inhumane. These treatments can literally save someone's life. Is it right and fair that an insurance company cover someone's kidney transplant surgery (\$150,000 and \$17,000 per year after)? Because the reality would be that they can just stay on dialysis forever and continue to live. It's easy to say that there would be a huge benefit to their life. Why do we show compassion for this person with bad kidneys and not transgender humans? Why are insurance companies allowed to treat our care to not be medically necessary?

The answer is money. Most insurance companies view trans care as not being cost effective. A recent testimony from an HMSA rep said "it will cost it's members nine million dollars." Personally, I find this to be no where near correct. I would ask how HMSA determined that cost? The reality is this... Six tenths of one percent of Hawaii's population is transgender which equates to about 8,000 people. We know not all of those 8,000 are members of HMSA. Half probably don't even have health insurance. I cannot speak on the exact numbers but I can speak on other facts. U.S policy makers generally deem medical services to be cost-effective if the price falls below \$100,000 per year of quality of life (So not a kidney transplant). Last year, HMSA denied me for a \$6,500 breast augmentation. After fighting for seven long months. Last week an external review committee over turned that denial. The committee stated that the cost of this care was HIGHLY effective at treating gender dysphoria and backed it up with over a dozen references. Yet HMSA, said they couldn't find any material that said this procedure would benefit me.

When HMSA calculates that \$9 million I am sure they don't include what other treatments drop off. What do I mean? When a transgender person is constantly denied health care coverage many turn to negative outlets (Sex, drugs, alcohol, suicide). Should they get treatment, it has already been proven that insurance companies save on HIV/AIDs treatment, drug/alcohol abuse treatment (rehab, ER visits for overdose), suicide ideation counseling, and additional psychotherapy counseling to help cope with being denied. What does HMSA spend each year on all of that? What is more cost effective? What creates a better community?

The final thing I want to address is how not covering this care keeps the transgender community from progressing in life. Next fall I have serious ambitions to attend grad school at The University of Hawaii. However, I may not be able to do that because my care isn't important enough and necessary enough in HMSA's eyes. But it's important enough to me that I will get a second and third job to pay for these things that combat my gender dysphoria. In doing so I lose out on my education. I would love to be able to be treated as a human and be allowed to not have to choose between my health and education.

You can find multiple studies from other states from Johns Hopkins debunking all of what these insurance companies say about how much it will cost. Please don't be fooled by these companies and their fake support of the transgender community. HMSA and other Hawaii insurance companies are far behind the curve and to allow them to constantly discriminate and deny care would be at the fault of those we voted to represent us. Please help us be seen and allow us to get the help we need. Don't keep kicking us down like a rabid animal. Stop the pain and make our community and this state a better more transgender friendly place for us. Set the standard and show other states that we are better.

Mahalo for your time,

Sarah Dubai

She/Her



**SB-2835-SD-1**

Submitted on: 2/27/2022 7:11:24 PM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Sonia Blackiston	Individual	Support	No

Comments:

Dear Chair Rhoads, Vice Chair Keohokalole, and Honorable Members of the Committee:

I strongly support SB 2835 SD1 which clarifies the language on the transgender anti-discrimination health insurance law (Act 135, 2016) to ensure the prohibition of categorical denials of gender affirming treatments/surgeries and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary (not cosmetic) and should be covered by transgender patients' insurance. Without insurance coverage of these medically necessary procedures, trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and Act 135 by forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) by passing this bill.

Thank you for investing in the health and safety of our māhū and trans community members!

Sincerely,

Sonia Blackiston

**SB-2835-SD-1**

Submitted on: 2/28/2022 5:59:36 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Renee Pedersen	Individual	Support	No

Comments:

Dear Chair Yamane, Vice-Chair Tam, and Honorable Members,

I strongly support HB2405 which updates the language on the transgender anti-discrimination health insurance law and requires insurance companies in Hawai'i to post their policies. There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary and should be fully covered by patients' insurance.

Without insurance coverage of these medically necessary procedures (that are provided for the cisgender people), trans lives are put at risk for depression and suicidal ideation. Please make sure that insurance companies are not ignoring the majority of medical opinion and forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) that ignore the law and medical necessity of gender-affirming care by passing this bill. When insurance companies categorically deny certain gender-affirming procedures by saying they are cosmetic in their policies, insurers attempt to take themselves out of HRS §432E-1.4(a) (Medical Necessity Statute). The Medical Necessity Statute requires coverage of a procedure if (1) it is not specifically excluded (2) is recommended by a licensed healthcare provider and (3) is medically necessary. Because (1) the anti-discrimination law prohibits insurance companies from categorically excluding surgeries like facial feminization and breast augmentation for transgender people (a protected gender identity) in their policies, (2) licensed doctors are recommending these procedures, and (3) gender-affirming procedures (even those that HMSA and Kaiser have categorically) are supported by the majority of medical opinion, insurance companies are subject to the controlling definition of medical necessity in the HRS 432E.

Providing gender affirming services in Hawaii since 2015, I have personally seen the toll lack of access to these services takes on a person who is not cisgender. The additional barriers community members face daily should be reduced by the support of the state and equal treatment with their insurance policies, not reinforced by denial of care and worsening of health outcomes that increase healthcare spending overall. As many states have taken steps to provide this care through requiring all insurances to cover these procedures, including their state Medicaid program, it is critical to the health of this community in Hawaii to have access as a resident of this state. We have seen people die from desperation to receive services that should be covered by Hawaii insurers and are greatly affected by these policy decisions.

Our transgender community members deserve healthcare that meets their needs, just like all members of our community. Thank you for investing in the health and safety of our māhū and trans community members!

**SB-2835-SD-1**

Submitted on: 2/28/2022 8:03:20 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Jaime Stevens, MD, MPH	Individual	Support	No

Comments:

Jaime Stevens, MD, MPH  
1177 Queen St. #2707 Honolulu, HI, 96814  
February 28, 2022

Hawai'i State Legislature Re: Testimony in Support of SB2835 SD1

Aloha Members of the Hawai'i State Senate Judiciary Committee,

I am a child, adolescent, and adult psychiatrist on O'ahu writing in support of clarifying the transgender anti-discrimination health insurance law (Act 135, 2016) to ensure the prohibition of categorical denials of gender affirming treatments/surgeries and require insurance companies in Hawai'i to post their policies.

Transition-related health care services are medically necessary and without insurance coverage trans lives are put at risk for depression and suicidal ideation.

Thank you for supporting equitable healthcare for our māhū and gender diverse community members.

Jaime Stevens, MD, MPH, FAPA

**SB-2835-SD-1**

Submitted on: 2/28/2022 8:32:13 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Wendy Taylor	Individual	Support	No

Comments:

Dear Chair Rhoads, Vice Chair Keohokalole, and Honorable Members of the Committee:

I strongly support SB 2835 SD1 which clarifies the language on the transgender anti-discrimination health insurance law (Act 135, 2016) to ensure the prohibition of categorical denials of gender affirming treatments and/or surgeries and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary (not cosmetic) and need to be covered by transgender patients' insurance. Without insurance coverage of these medically necessary procedures, trans lives are put at risk for depression and suicidal ideation. We are losing members of this community to suicide every day.

Please make sure that insurance companies are not ignoring the majority of medical opinion and Act 135 by forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) by passing this bill.

Thank you for your concern about the health, safety, and lives of our māhū and trans community members!

Warmest Regards,

Wendy Taylor

**SB-2835-SD-1**

Submitted on: 2/28/2022 9:02:46 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Jody Shiroma	Individual	Support	No

Comments:

Dear Chair Rhoads, Vice Chair Keohokalole, and Honorable Members of the Committee:

I strongly support SB 2835 SD1 which clarifies the language on the transgender anti-discrimination health insurance law (Act 135, 2016) to ensure the prohibition of categorical denials of gender affirming treatments/surgeries and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary (not cosmetic) and should be covered by transgender patients' insurance. Without insurance coverage of these medically necessary procedures, trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinion and Act 135 by forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) by passing this bill.

Thank you for investing in the health and safety of our māhū and trans community members!

With aloha,

Jody Shiroma

Aloha mai,

I am a transgender woman and a lucky survivor up to this point. My testimony is part of a long and complicated relationship with transition that led me near suicide in the past. Much of the progress we think we have made in the last 20 years with transgender healthcare I can strongly testify we have not really made. I can say this as a transgender woman who had once attempted transition 20 years ago; but for various social reasons, complicated by my physical form, my voice, and appearance I felt I could never live as a woman; only as the disgusting monster others saw me as. While society has changed; medical insurance has not changed all that much. With the exception of bottom surgeries are covered in Hawai'i with the near exclusion of everything else. The root of gender dysphoria varies by person and is more commonly associated with other traits. For me it has always been my voice.

As you deliberate this bill in hearing today I am having voice surgery. Its a voice surgery I have been waiting a year and half for; that has a waiting list. Its my second voice surgery as the method of the first still did not give me a female voice. Kaiser would not even process the request for voice surgery. HMSA has denied it. In denying it and requesting an ERISA disclosure to their statement "Voice alteration surgeries are not shown to improve health outcomes"; ironic as the medical necessity were clearly established by my therapists and doctors; a doctor who has a 17 year study with proved health outcomes for transgender women; they had no basis to deny it; in fact they could not produce a single document using the federal ERISA law to back up that claim; even when prompted approximately 4 times. These are the problems facing the trans communities.

- 1) Trans and non-binary people cannot access many doctors, like plastic surgeons, will not or refuse to work on transgender individuals (this is the majority, not the minority)
- 2) Doctors that will work on/with transgender individuals will not process insurance. This is because insurance has so commonly denied them in the past that they do not wish to waste their time.
- 3) Insurance categorically denies any claims for coverage. Only a low percentage of folks can do this. This is after spending considerable time and effort in traveling and waiting for appointments with doctors. They are denied categorically.

I have read HMSA, Kaisers, and the insurance commissioner's testimony and find them harmful. Deliberately harmful. I have friends who could have and nearly had killed themselves all while fighting for their denied healthcare coverage. Act 135 was an anti-discrimination law passed in 2016. It is largely ignored. HMSA, Kaiser, and the insurance commissioners testimony largely disregard that insurers are currently breaking a law regarding medical necessity; and this act requests that be remedied. International organizations already recognize these procedures as medically necessary for transgender individuals (note: transgender individuals, not the general public as HMSA would lead you to believe, the diagnosis of gender dysphoria is important; as it is the alignment to a gender not assigned at birth which one is seeking alignment to).

I am recommending and advocating that the medically necessary determination of the surgeries be kept. They are currently being ignored categorically and are being ignored because the insurance companies took the generic wordings of Act 135 and only applied them to bottom surgery (the most minimal possible definition). The only thing that has changed since 2002 and now is this bottoms surgery. More than 20 years have passed and how many have died.

As a trans woman I have also been discriminated in my breast surgeries, facial feminization procedures, types of hormones, body surgeries, my current voice surgery, and just in general. Because of this I've had to go through extraordinary means to accomplish these or fight with insurers, currently to the detriment of my marriage; which I have since separated from my wife, do to the outcomes hours multiple jobs and fighting between them for coverage has had.

If we are not able to pass this bill with coverage for these procedures as medically necessary as determined by doctors and therapists (NOT INSURERS!) we will lose many more people. Even when fighting, even with both Kaiser and HMSA insurance as I have both had, even after 2 ½ years of trying, after a the internal resolve of coming to my truth in a second time in my life after failing in my first transition to simply life as a woman and having that endless fire, still I cannot win here.

Personally speaking I am a transgender who has the world thrown at me, and for some reason I am still here. I am an innovator, and I am a creator. I know I am the only person in the entire world who is bringing Hawaiian language movies to Netflix and Disney+ ('Ōleloflix) via community. Allowing 'Ōlelo Hawai'i and indigineous languages to exist in the mainstream. I am an example of a person that could be gone without these things ever existing. I am powerful; like many are in shaping the world. Just look what trans people have contributed to society and to imagine what could have not ever existed will take your breath away.

An audit is not necessary, and has historically been waived. This is further defining the anti-discrimination law of 2016, Act 135 preventing discrimination; which continued to this day because insurers took it to mean the minimal. They categories being defined were necessary so that insurers cant say they are covering gender transition services when they're necessary. This is not a health mandate. This is fixing an anti-discrimination law/act. When a traffic light is broken you don't conduct studies while people are getting run over in the street. You fix the traffic light so people stop dying in the street.

Please pass this act. Ignore the testimonies of HMSA, Kaiser, and the Insurance Commissioner. Increase the protections of this bill rather than weakening them to the point that this bill and act are useless. Please save our lives - we are worth it. I am begging you; pass it with full non watered down protections. Medically necessary. Insurers aren't allowed to say what is medically necessary and what is not. They should use the evidence that California, Oregon, and Washington all currently use and provide this medically necessary coverage.



I agree with the testimony of HHHRC and others who directly support our community. I am against the comments of Kaiser, HMSA, and the insurance commissioner who's requests for amendments should be ignored, as they harmful to our lives and well being. As enduring 2 ½ years of denied care and over 20 years of witness I am able to make these statements.

Kalani Bright

**LATE**

**SB-2835-SD-1**

Submitted on: 2/28/2022 1:41:36 PM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
yvonne mahelona	Individual	Support	No

Comments:

Aloha I am Yvonne Mahelona a constituent of Honolulu County, a Birthworker and midwifery student, grassroots organizer and most importantly Kanaka Oiwī, a Native of this so called state. I am encouraging you to pass SB2835 which will prohibit health insurance companies from denying coverage on the basis of gender identity if the policy covers treatment for purposes other than gender transition. Health care is a basic human right. It's the truth though it sadly isn't a reality. Another truth: gender non conforming folks are often discriminated against because of their identity. Passing this bill is one step out of many to ensure that all people have a shot at securing quality healthcare. A BASIC HUMAN RIGHT which shouldn't be a privilege only available to a certain type of individual.

Mahalo,

YM

**SB-2835-SD-1**

Submitted on: 2/28/2022 4:05:46 PM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Ashley Galacgac	Testifying for AF3IRM Hawai'i	Support	No

Comments:

Dear Chair Rhoads, Vice Chair Keohokalole, and Honorable Members of the Committee:

I write in strong support of SB 2835 SD1 which clarifies the language on the transgender anti-discrimination health insurance law (Act 135, 2016) to ensure the prohibition of categorical denials of gender-affirming treatments/surgeries and requires insurance companies in Hawai'i to post their policies.

There is an overwhelming and growing consensus among major medical organizations that transition-related health care services, including surgical treatments, to alleviate gender dysphoria are medically necessary (not cosmetic) and should be covered by transgender patients' insurance. Without insurance coverage of these medically necessary procedures, trans lives are put at risk for depression and suicidal ideation.

Please make sure that insurance companies are not ignoring the majority of medical opinions and Act 135 by forming their own internal policies (e.g HMSA Policy Number: MM.06.026 & Kaiser 2022 policy page 41) by passing this bill.

Thank you for investing in the health and safety of our māhū and trans community members!

**SB-2835-SD-1**

Submitted on: 2/28/2022 6:22:18 PM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Chantell Cambia	Individual	Support	No

Comments:

Aloha Chairs, Vice Chairs, and Honorable Members,

I ask you to pass SB2835, which will prohibit health insurance companies from limit people of any gender for access to healthcare. No one should be limited or denied access by health insurance companies healthcare resources that is essential to their living/survival. Health insurance companies who commit these vile actions to limiting people of any gender to healthcare because of their gender should be held accountable. Health insurance should not be doing this to people. Healthcare is essential to person's living no matter their gender. Pass SB2835!

**SB-2835-SD-1**

Submitted on: 2/28/2022 8:42:26 PM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Laura Ramirez	Individual	Support	No

Comments:

Aloha,

I strongly support SB2835 and urge you to pass this bill so that nobody is denied the healthcare services or treatment or insurance coverage they need because of gender discrimination.

Mahalo,

Laura Ramirez

Kapa'a, Kaua'i



**LATE**

February 25, 2022

The Honorable Karl Rhoads, Chair  
The Honorable Jarrett Keohokalole, Vice Chair  
Senate Committee on Judiciary

**Senate Bill 2835 SD1 – Relating to Insurance**

Dear Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Hawaii Association of Health Plans (HAHP) appreciates the opportunity to provide testimony on SB 2835 SD1. HAHP is a statewide partnership of Hawaii’s health plans and affiliated organizations to improve the health of Hawaii’s communities together. The vast majority of Hawaii residents receive their health coverage through a health plan associated with one of our organizations.

HAHP supports the intent of this measure to ensure non-discrimination in coverage based on gender identity and to require clear information about coverage of gender transition services, including the process for appealing a claim denied on the basis of medical necessity. However, we have grave concerns with this measure as written.

This measure mandates health insurance coverage for all health care services related to gender transition including, but not limited to, the procedures outlined in this bill. This mandate for coverage completely circumvents the universal standard of using medical necessity to determine whether a health intervention is appropriate for patients. Medical necessity as defined in HRS 432E-1.4 is applied to all our members to ensure a health intervention is appropriate considering potential harms and benefits to the patient; effective in improving health outcomes; and cost-effective for the medical condition being treated, compared to alternative health interventions, based on clinical best practices and scientific evidence. Medical necessity is also a key component in keeping health care affordable and sustainable for everyone.

It should be noted that some of the procedures specified in this measure would be considered cosmetic in nature and are generally not covered for any of our members based on medical necessity. Therefore, as written this measure would create new mandated benefits and we respectfully request that should this measure move forward that the State Auditor first conduct an impact assessment report pursuant to HRS 23-51 and 23-52.

[hahp.org](http://hahp.org) | 818 Keeaumoku St., Honolulu, HI 96814 | [info@hahp.org](mailto:info@hahp.org)



Thank you for allowing us to provide comments on SB 2835 SD1.

Sincerely,

HAHP Public Policy Committee

cc: HAHP Board Members

[hahp.org](http://hahp.org) | 818 Keeaumoku St., Honolulu, HI 96814 | [info@hahp.org](mailto:info@hahp.org)

AlohaCare | HMAA | HMSA | Humana | HWMG | Kaiser Permanente | MDX Hawaii | Ohana Health Plan |  
UHA Health Insurance | UnitedHealthcare

**LATE**

**SB-2835-SD-1**

Submitted on: 3/1/2022 3:53:37 PM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Erica	Individual	Comments	No

Comments:

I here testify with health insurance companies from denying coverage on the basis of gender identity if the policy covers the treatment for purposes other than gender transition