



GOV. MSG. NO. 1139

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 16, 2022

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty-First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty-First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 16, 2022, the following bill was signed into law:

HB2405 HD2 SD2 CD1

RELATING TO INSURANCE.
ACT 039

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

HOUSE OF REPRESENTATIVES
THIRTY-FIRST LEGISLATURE, 2022
STATE OF HAWAII

H.B. NO. 2405
H.D. 2
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO INSURANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. This Act shall be known and cited as the Gender
2 Affirming Treatment Act.

3 SECTION 2. The legislature finds that many transgender
4 persons have experienced discriminatory treatment from health
5 insurance providers when seeking coverage for gender affirming
6 treatments. Insurance policies often cover therapies and
7 surgeries like feminizing or masculinizing hormone therapies,
8 voice therapies, chest augmentations or reductions, and genital
9 surgeries for other purposes but deny the same treatments for
10 purposes of gender affirmation.

11 The legislature further finds that these arbitrary
12 assessments of medical necessity are not evidence-based and
13 interfere with the patient-physician relationship. They also
14 place transgender persons who are denied treatment at higher
15 risk of suicide and depression.

16 The legislature recognizes that, while federal health care
17 guidelines previously prohibited health insurance and health



1 care providers from discriminating on the basis of gender
2 identity, these protections have been largely rolled back.

3 Accordingly, the purpose of this Act is to:

- 4 (1) Prohibit health insurers, mutual benefit societies,
5 and health maintenance organizations from applying
6 categorical cosmetic or blanket exclusions to gender
7 affirming treatments or procedures when determined to
8 be medically necessary pursuant to applicable law;
- 9 (2) Specify a process for appealing a claim denied on the
10 basis of medical necessity; and
- 11 (3) Require health insurers, mutual benefit societies, and
12 health maintenance organizations to provide applicants
13 and insured persons with clear information about the
14 coverage of gender transition services, including the
15 process for appealing a claim denied on the basis of
16 medical necessity.

17 SECTION 3. Section 431:10A-118.3, Hawaii Revised Statutes,
18 is amended to read as follows:

19 "**§431:10A-118.3 Nondiscrimination on the basis of actual**
20 **gender identity or perceived gender identity; coverage for**
21 **services.** (a) No individual [~~and~~] or group accident and health



1 or sickness policy, contract, plan, or agreement that provides
2 health care coverage shall discriminate with respect to
3 participation and coverage under the policy, contract, plan, or
4 agreement against any person on the basis of actual gender
5 identity or perceived gender identity.

6 (b) Discrimination under this section includes the
7 following:

8 (1) Denying, canceling, limiting, or refusing to issue or
9 renew an insurance policy, contract, plan, or
10 agreement on the basis of a transgender person's or
11 [~~the~~] a person's transgender family member's actual
12 gender identity or perceived gender identity;

13 (2) Demanding or requiring a payment or premium that is
14 based on a transgender person's or [~~the~~] a person's
15 transgender family member's actual gender identity or
16 perceived gender identity;

17 (3) Designating a transgender person's or [~~the~~] a person's
18 transgender family member's actual gender identity or
19 perceived gender identity as a preexisting condition
20 to deny, cancel, or limit coverage; and



1 (4) Denying, canceling, or limiting coverage for services
2 on the basis of actual gender identity or perceived
3 gender identity, including but not limited to the
4 following:

5 (A) Health care services related to gender
6 transition; provided that there is coverage under
7 the policy, contract, plan, or agreement for the
8 services when the services are not related to
9 gender transition; and

10 (B) Health care services that are ordinarily or
11 exclusively available to individuals of ~~one~~ any
12 sex.

13 (c) The medical necessity of any treatment for a
14 transgender person, or any person, on the basis of actual gender
15 identity or perceived gender identity shall be determined
16 pursuant to the insurance policy, contract, plan, or agreement
17 and shall be defined in ~~[a manner that is consistent with other~~
18 ~~covered services.]~~ accordance with applicable law. In the event
19 of an appeal of a claim denied on the basis of medical necessity
20 of the treatment, such appeal shall be decided in a manner
21 consistent with applicable law and in consultation with a health



1 care provider with experience in prescribing or delivering
2 gender affirming treatment who shall provide input on the
3 appropriateness of the denial of the claim.

4 (d) An insurer shall not apply categorical cosmetic or
5 blanket exclusions to gender affirming treatments or procedures,
6 or any combination of services or procedures or revisions to
7 prior treatments, when determined to be medically necessary
8 pursuant to applicable law, only if the policy, contract, plan,
9 or agreement also provides coverage for those services when the
10 services are offered for purposes other than gender transition.
11 These services may include but are not limited to:

- 12 (1) Hormone therapies;
- 13 (2) Hysterectomies;
- 14 (3) Mastectomies;
- 15 (4) Vocal training;
- 16 (5) Feminizing vaginoplasties;
- 17 (6) Masculinizing phalloplasties;
- 18 (7) Metaoidioplasties;
- 19 (8) Breast augmentations;
- 20 (9) Masculinizing chest surgeries;
- 21 (10) Facial feminization surgeries;



1 (11) Reduction thyroid chondroplasties;
2 (12) Voice surgeries and therapies; and
3 (13) Electrolysis or laser hair removal.
4 (e) Each individual or group accident and health or
5 sickness policy, contract, plan, or agreement shall provide
6 applicants and policyholders with clear information about the
7 coverage of gender transition services and the requirements for
8 determining medically necessary treatments related to these
9 services, including the process for appealing a claim denied on
10 the basis of medical necessity.
11 [~~e~~] (f) Any coverage provided shall be subject to
12 copayment, deductible, and coinsurance provisions of an
13 individual [~~and~~] or group accident and health or sickness
14 policy, contract, plan, or agreement that are no less favorable
15 than the copayment, deductible, and coinsurance provisions for
16 substantially all other medical services covered by the policy,
17 contract, plan, or agreement.
18 (g) Nothing in this section shall be construed to mandate
19 coverage of a service that is not medically necessary.
20 [~~e~~] (h) As used in this section unless the context
21 requires otherwise:



1 "Actual gender identity" means a person's internal sense of
2 being male, female, a gender different from the gender assigned
3 at birth, a transgender person, or neither male nor female.

4 "Gender transition" means the process of a person changing
5 the person's outward appearance or sex characteristics to accord
6 with the person's actual gender identity.

7 "Perceived gender identity" means an observer's impression
8 of another person's actual gender identity or the observer's own
9 impression that the person is male, female, a gender different
10 from the gender assigned at birth, a transgender person, or
11 neither male nor female.

12 "Transgender person" means a person who has [~~gender~~
13 ~~identity disorder or~~] gender dysphoria, has received health care
14 services related to gender transition, [~~adopts the appearance or~~
15 ~~behavior of the opposite sex,~~] or otherwise identifies as a
16 gender different from the gender assigned to that person at
17 birth."

18 SECTION 4. Section 432:1-607.3, Hawaii Revised Statutes,
19 is amended to read as follows:

20 "**§432:1-607.3 Nondiscrimination on the basis of actual**
21 **gender identity or perceived gender identity; coverage for**



1 **services.** (a) No individual [~~and~~] or group hospital [~~and~~] or
2 medical service policy, contract, plan, or agreement that
3 provides health care coverage shall discriminate with respect to
4 participation and coverage under the policy, contract, plan, or
5 agreement against any person on the basis of actual gender
6 identity or perceived gender identity.

7 (b) Discrimination under this section includes the
8 following:

9 (1) Denying, canceling, limiting, or refusing to issue or
10 renew an insurance policy, contract, plan, or
11 agreement on the basis of a transgender person's or
12 [~~the~~] a person's transgender family member's actual
13 gender identity or perceived gender identity;

14 (2) Demanding or requiring a payment or premium that is
15 based on a transgender person's or [~~the~~] a person's
16 transgender family member's actual gender identity or
17 perceived gender identity;

18 (3) Designating a transgender person's or [~~the~~] a person's
19 transgender family member's actual gender identity or
20 perceived gender identity as a preexisting condition
21 to deny, cancel, or limit coverage; and



1 (4) Denying, canceling, or limiting coverage for services
2 on the basis of actual gender identity or perceived
3 gender identity, including but not limited to the
4 following:

5 (A) Health care services related to gender
6 transition; provided that there is coverage under
7 the policy, contract, plan, or agreement for the
8 services when the services are not related to
9 gender transition; and

10 (B) Health care services that are ordinarily or
11 exclusively available to individuals of ~~one~~ any
12 sex.

13 (c) The medical necessity of any treatment for a
14 transgender person, or any person, on the basis of actual gender
15 identity or perceived gender identity shall be determined
16 pursuant to the ~~[insurance]~~ hospital or medical service policy,
17 contract, plan, or agreement and shall be defined in ~~[a manner~~
18 ~~that is consistent with other covered services.]~~ accordance with
19 applicable law. In the event of an appeal of a claim denied on
20 the basis of medical necessity of the treatment, such appeal
21 shall be decided in a manner consistent with applicable law and



1 in consultation with a health care provider with experience in
2 prescribing or delivering gender affirming treatment who shall
3 provide input on the appropriateness of the denial of the claim.

4 (d) A mutual benefit society shall not apply categorical
5 cosmetic or blanket exclusions to gender affirming treatments or
6 procedures, or any combination of services or procedures or
7 revisions to prior treatments, when determined to be medically
8 necessary pursuant to applicable law, only if that the policy,
9 contract, plan, or agreement also provides coverage for those
10 services when the services are offered for purposes other than
11 gender transition. These services may include but are not
12 limited to:

- 13 (1) Hormone therapies;
- 14 (2) Hysterectomies;
- 15 (3) Mastectomies;
- 16 (4) Vocal training;
- 17 (5) Feminizing vaginoplasties;
- 18 (6) Masculinizing phalloplasties;
- 19 (7) Metaoidioplasties;
- 20 (8) Breast augmentations;
- 21 (9) Masculinizing chest surgeries;



- 1 (10) Facial feminization surgeries;
- 2 (11) Reduction thyroid chondroplasties;
- 3 (12) Voice surgeries and therapies; and
- 4 (13) Electrolysis or laser hair removal.

5 (e) Each individual or group hospital or medical service
6 policy, contract, plan, or agreement shall provide applicants
7 and members with clear information about the coverage of gender
8 transition services and the requirements for determining
9 medically necessary treatments related to these services,
10 including the process for appealing a claim denied on the basis
11 of medical necessity.

12 [~~d~~] (f) Any coverage provided shall be subject to
13 copayment, deductible, and coinsurance provisions of an
14 individual [~~and~~] or group hospital [~~and~~] or medical service
15 policy, contract, plan, or agreement that are no less favorable
16 than the copayment, deductible, and coinsurance provisions for
17 substantially all other medical services covered by the policy,
18 contract, plan, or agreement.

19 (g) Nothing in this section shall be construed to mandate
20 coverage of a service that is not medically necessary.



1 [~~(e)~~] (h) As used in this section unless the context
2 requires otherwise:

3 "Actual gender identity" means a person's internal sense of
4 being male, female, a gender different from the gender assigned
5 at birth, a transgender person, or neither male nor female.

6 "Gender transition" means the process of a person changing
7 the person's outward appearance or sex characteristics to accord
8 with the person's actual gender identity.

9 "Perceived gender identity" means an observer's impression
10 of another person's actual gender identity or the observer's own
11 impression that the person is male, female, a gender different
12 from the gender assigned at birth, a transgender person, or
13 neither male nor female.

14 "Transgender person" means a person who has [~~gender~~
15 ~~identity disorder or~~] gender dysphoria, has received health care
16 services related to gender transition, [~~adopts the appearance or~~
17 ~~behavior of the opposite sex,~~] or otherwise identifies as a
18 gender different from the gender assigned to that person at
19 birth."

20 SECTION 5. Section 432D-26.3, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "**§432D-26.3 Nondiscrimination on the basis of actual**
2 **gender identity or perceived gender identity; coverage for**
3 **services.** (a) No health maintenance organization policy,
4 contract, plan, or agreement shall discriminate with respect to
5 participation and coverage under the policy, contract, plan, or
6 agreement against any person on the basis of actual gender
7 identity or perceived gender identity.

8 (b) Discrimination under this section includes the
9 following:

10 (1) Denying, canceling, limiting, or refusing to issue or
11 renew an insurance policy, contract, plan, or
12 agreement on the basis of a transgender person's or
13 [~~the~~] a person's transgender family member's actual
14 gender identity or perceived gender identity;

15 (2) Demanding or requiring a payment or premium that is
16 based on a transgender person's or [~~the~~] a person's
17 transgender family member's actual gender identity or
18 perceived gender identity;

19 (3) Designating a transgender person's or [~~the~~] a person's
20 transgender family member's actual gender identity or



1 perceived gender identity as a preexisting condition
2 to deny, cancel, or limit coverage; and
3 (4) Denying, canceling, or limiting coverage for services
4 on the basis of actual gender identity or perceived
5 gender identity, including but not limited to the
6 following:
7 (A) Health care services related to gender
8 transition; provided that there is coverage under
9 the policy, contract, plan, or agreement for the
10 services when the services are not related to
11 gender transition; and
12 (B) Health care services that are ordinarily or
13 exclusively available to individuals of ~~one~~ any
14 sex.
15 (c) The medical necessity of any treatment for a
16 transgender person, or any person, on the basis of actual gender
17 identity or perceived gender identity shall be determined
18 pursuant to the ~~[insurance]~~ health maintenance organization
19 policy, contract, plan, or agreement and shall be defined in [a
20 manner that is consistent with other covered services.]
21 accordance with applicable law. In the event of an appeal of a



1 claim denied on the basis of medical necessity of the treatment,
2 such appeal shall be decided in a manner consistent with
3 applicable law and in consultation with a health care provider
4 with experience in prescribing or delivering gender affirming
5 treatment who shall provide input on the appropriateness of the
6 denial of the claim.

7 (d) A health maintenance organization shall not apply
8 categorical cosmetic or blanket exclusions to gender affirming
9 treatments or procedures, or any combination of services or
10 procedures or revisions to prior treatments, when determined to
11 be medically necessary pursuant to applicable law, only if the
12 policy, contract, plan, or agreement also provides coverage for
13 those services when the services are offered for purposes other
14 than gender transition. These services may include but are not
15 limited to:

- 16 (1) Hormone therapies;
17 (2) Hysterectomies;
18 (3) Mastectomies;
19 (4) Vocal training;
20 (5) Feminizing vaginoplasties;
21 (6) Masculinizing phalloplasties;



- 1 (7) Metaoidioplasties;
- 2 (8) Breast augmentations;
- 3 (9) Masculinizing chest surgeries;
- 4 (10) Facial feminization surgeries;
- 5 (11) Reduction thyroid chondroplasties;
- 6 (12) Voice surgeries and therapies; and
- 7 (13) Electrolysis or laser hair removal.

- 8 (e) Each health maintenance organization policy, contract,
- 9 plan, or agreement shall provide applicants and subscribers with
- 10 clear information about the coverage of gender transition
- 11 services and the requirements for determining medically
- 12 necessary treatments related to these services, including the
- 13 process for appealing a claim denied on the basis of medical
- 14 necessity.

- 15 [~~d~~] (f) Any coverage provided shall be subject to
- 16 copayment, deductible, and coinsurance provisions of a health
- 17 maintenance organization policy, contract, plan, or agreement
- 18 that are no less favorable than the copayment, deductible, and
- 19 coinsurance provisions for substantially all other medical
- 20 services covered by the policy, contract, plan, or agreement.



1 (g) Nothing in this section shall be construed to mandate
2 coverage of a service that is not medically necessary.

3 ~~(e)~~ (h) As used in this section unless the context
4 requires otherwise:

5 "Actual gender identity" means a person's internal sense of
6 being male, female, a gender different from the gender assigned
7 at birth, a transgender person, or neither male nor female.

8 "Gender transition" means the process of a person changing
9 the person's outward appearance or sex characteristics to accord
10 with the person's actual gender identity.

11 "Perceived gender identity" means an observer's impression
12 of another person's actual gender identity or the observer's own
13 impression that the person is male, female, a gender different
14 from the gender assigned at birth, a transgender person, or
15 neither male nor female.

16 "Transgender person" means a person who has ~~[gender~~
17 ~~identity disorder or]~~ gender dysphoria, has received health care
18 services related to gender transition, ~~[adopts the appearance or~~
19 ~~behavior of the opposite sex,~~] or otherwise identifies as a
20 gender different from the gender assigned to that person at
21 birth."



1 SECTION 6. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 7. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect upon its approval.

APPROVED this 16 day of June , 2022



GOVERNOR OF THE STATE OF HAWAII



HB No. 2405, HD 2, SD 2, CD 1


THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 3, 2022
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2022.



Scott K. Saiki
Speaker
House of Representatives




Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI'I

Date: May 3, 2022
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-First Legislature of the State of Hawai'i, Regular Session of 2022.


President of the Senate


Clerk of the Senate