

JAN 21 2022

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# A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1           SECTION 1. The legislature finds that many transgender  
2 persons have experienced discriminatory treatment from health  
3 insurance providers when seeking coverage for gender-confirming  
4 treatments. Insurance policies often cover therapies and  
5 surgeries like feminizing or masculinizing hormone therapies,  
6 voice therapies, chest augmentations or reductions, and genital  
7 surgeries for other purposes but deny the same treatments for  
8 purposes of gender affirmation.

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

14           The legislature recognizes that, while federal health care  
15 guidelines previously prohibited health insurance and healthcare  
16 providers from discriminating on the basis of gender identity,  
17 these protections have been largely rolled back.



1           Accordingly, the purpose of this Act is to require health  
2 insurance companies to provide applicants and policy holders  
3 with clear information on the policy's coverage of gender  
4 transition treatments and to prohibit insurance companies from  
5 discriminating on the basis of gender identity.

6           SECTION 2. Section 431:10A-118.3, Hawaii Revised Statutes,  
7 is amended to read as follows:

8           "**§431:10A-118.3 Nondiscrimination on the basis of actual**  
9 **gender identity or perceived gender identity; coverage for**  
10 **services.** (a) No individual and group accident and health or  
11 sickness policy, contract, plan, or agreement that provides  
12 health care coverage, including any mutual benefit society or  
13 health maintenance organization governed by chapter 432D, shall  
14 discriminate with respect to participation and coverage under  
15 the policy, contract, plan, or agreement against any person on  
16 the basis of actual gender identity or perceived gender  
17 identity.

18           (b) Discrimination under this section includes the  
19 following:

20           (1) Denying, canceling, limiting, or refusing to issue or  
21           renew an insurance policy, contract, plan, or



1 agreement on the basis of a transgender person's or  
2 the person's family member's actual gender identity or  
3 perceived gender identity;

4 (2) Demanding or requiring a payment or premium that is  
5 based on a transgender person's or the person's family  
6 member's actual gender identity or perceived gender  
7 identity;

8 (3) Designating a transgender person's or the person's  
9 family member's actual gender identity or perceived  
10 gender identity as a preexisting condition to deny,  
11 cancel, or limit coverage; and

12 (4) Denying, canceling, or limiting coverage for services  
13 on the basis of actual gender identity or perceived  
14 gender identity including but not limited to the  
15 following:

16 (A) Health care services related to gender  
17 transition; provided that there is coverage under  
18 the policy, contract, plan, or agreement for the  
19 services when the services are not related to  
20 gender transition; and



1 (B) Health care services that are ordinarily or  
2 exclusively available to individuals of ~~one~~ any  
3 sex.

4 (c) The medical necessity of any treatment for a  
5 transgender person or any person on the basis of actual gender  
6 identity or perceived gender identity shall be determined  
7 pursuant to the insurance policy, contract, plan, or agreement  
8 and shall be defined in ~~[a manner that is consistent with other~~  
9 ~~covered services.]~~ accordance with the most recent edition of  
10 the Standards of Care for the Health of Transsexual,  
11 Transgender, and Gender Nonconforming People, issued by the  
12 World Professional Association for Transgender Health.

13 (d) All health care services related to gender transition  
14 treatments shall be considered medically necessary and not  
15 cosmetic; provided the policy also provides coverage for those  
16 services when the services are offered for purposes other than  
17 gender transition. These services may include, but are not  
18 limited to:

19 (1) Hormone therapies;

20 (2) Hysterectomies;

21 (3) Mastectomies;



- 1        (4) Vocal training;
- 2        (5) Feminizing vaginoplasties;
- 3        (6) Masculinizing phalloplasties;
- 4        (7) Metaoidioplasties;
- 5        (8) Breast augmentations;
- 6        (9) Masculinizing chest surgeries;
- 7        (10) Facial feminization surgeries;
- 8        (11) Reduction thyroid chondroplasties;
- 9        (12) Voice surgeries and therapies;
- 10       (13) Electrolysis or laser hair removal; and
- 11       (14) Smoking cessation therapies.
- 12       (e) Each individual and group accident and health or
- 13 sickness policy, contract, plan, or agreement, including any
- 14 mutual benefit society or health maintenance organization
- 15 governed by chapter 432D, shall provide applicants and insured
- 16 persons with clear information about the coverage of gender
- 17 transition services and the requirements for determining
- 18 medically necessary treatments related to these services,
- 19 including the process for appealing a claim denied on the basis
- 20 of medical necessity.



1           [~~(d)~~] (f) Any coverage provided shall be subject to  
2 copayment, deductible, and coinsurance provisions of an  
3 individual and group accident and health or sickness policy,  
4 contract, plan, or agreement that are no less favorable than the  
5 copayment, deductible, and coinsurance provisions for  
6 substantially all other medical services covered by the policy,  
7 contract, plan, or agreement.

8           [~~(e)~~] (g) As used in this section unless the context  
9 requires otherwise:

10           "Actual gender identity" means a person's internal sense of  
11 being male, female, a gender different from the gender assigned  
12 at birth, or a transgender person[~~, or neither male nor female~~].

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

16           "Perceived gender identity" means an observer's impression  
17 of another person's actual gender identity or the observer's own  
18 impression that the person is male, female, a gender different  
19 from the gender assigned at birth, or a transgender person[~~, or~~  
20 ~~neither male nor female~~].



1 "Transgender person" means a person who has [~~gender~~  
2 ~~identity disorder or~~] gender dysphoria, has received health care  
3 services related to gender transition, [~~adopts the appearance or~~  
4 ~~behavior of the opposite sex,~~] or otherwise identifies as a  
5 gender different from the gender assigned to that person at  
6 birth."

7 SECTION 3. Section 432:1-607.3, Hawaii Revised Statutes,  
8 is amended to read as follows:

9 "**§432:1-607.3 Nondiscrimination on the basis of actual**  
10 **gender identity or perceived gender identity; coverage for**  
11 **services.** (a) No individual and group hospital and medical  
12 service policy, contract, plan, or agreement that provides  
13 health care coverage, including any mutual benefit society or  
14 health maintenance organization governed by chapter 432D, shall  
15 discriminate with respect to participation and coverage under  
16 the policy, contract, plan, or agreement against any person on  
17 the basis of actual gender identity or perceived gender  
18 identity.

19 (b) Discrimination under this section includes the  
20 following:



- 1           (1) Denying, canceling, limiting, or refusing to issue or  
2           renew an insurance policy, contract, plan, or  
3           agreement on the basis of a transgender person's or  
4           the person's family member's actual gender identity or  
5           perceived gender identity;
- 6           (2) Demanding or requiring a payment or premium that is  
7           based on a transgender person's or the person's family  
8           member's actual gender identity or perceived gender  
9           identity;
- 10          (3) Designating a person's or the transgender person's  
11          family member's actual gender identity or perceived  
12          gender identity as a preexisting condition to deny,  
13          cancel, or limit coverage; and
- 14          (4) Denying, canceling, or limiting coverage for services  
15          on the basis of actual gender identity or perceived  
16          gender identity including but not limited to the  
17          following:
- 18                (A) Health care services related to gender  
19                transition; provided that there is coverage under  
20                the policy, contract, plan, or agreement for the





1 services when the services are not related to  
2 gender transition; and

3 (B) Health care services that are ordinarily or  
4 exclusively available to individuals of ~~one~~ any  
5 sex.

6 (c) The medical necessity of any treatment for a  
7 transgender person or any person on the basis of actual gender  
8 identity or perceived gender identity shall be determined  
9 pursuant to the insurance policy, contract, plan, or agreement  
10 and shall be defined in ~~[a manner that is consistent with other~~  
11 ~~covered services.]~~ accordance with the most recent edition of  
12 the Standards of Care for the Health of Transsexual,  
13 Transgender, and Gender Nonconforming People, issued by the  
14 World Professional Association for Transgender Health.

15 (d) All health care services related to gender transition  
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19 gender transition. These services may include, but are not  
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- 5        (6) Masculinizing phalloplasties;
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- 7        (8) Breast augmentations;
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- 9        (10) Facial feminization surgeries;
- 10       (11) Reduction thyroid chondroplasties;
- 11       (12) Voice surgeries and therapies;
- 12       (13) Electrolysis or laser hair removal; and
- 13       (14) Smoking cessation therapies.
- 14       (e) Each individual and group accident and health or
- 15 sickness policy, contract, plan, or agreement, including any
- 16 mutual benefit society or health maintenance organization
- 17 governed by chapter 432D, shall provide applicants and insured
- 18 persons with clear information about the coverage of gender
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- 20 medically necessary treatments related to these services,



1 including the process for appealing a claim denied on the basis  
2 of medical necessity.

3       [~~(d)~~] (f) Any coverage provided shall be subject to  
4 copayment, deductible, and coinsurance provisions of an  
5 individual and group hospital and medical service policy,  
6 contract, plan, or agreement that are no less favorable than the  
7 copayment, deductible, and coinsurance provisions for  
8 substantially all other medical services covered by the policy,  
9 contract, plan, or agreement.

10       [~~(e)~~] (g) As used in this section unless the context  
11 requires otherwise:

12       "Actual gender identity" means a person's internal sense of  
13 being male, female, a gender different from the gender assigned  
14 at birth, or a transgender person[~~, or neither male nor female~~].

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

18       "Perceived gender identity" means an observer's impression  
19 of another person's actual gender identity or the observer's own  
20 impression that the person is male, female, a gender different



1 from the gender assigned at birth, or a transgender person[~~or~~  
2 ~~neither male nor female~~].

3 "Transgender person" means a person who has [~~gender~~  
4 ~~identity disorder or~~] gender dysphoria, has received health care  
5 services related to gender transition, [~~adopts the appearance or~~  
6 ~~behavior of the opposite sex,~~] or otherwise identifies as a  
7 gender different from the gender assigned to that person at  
8 birth."

9 SECTION 4. This Act does not affect rights and duties that  
10 matured, penalties that were incurred, and proceedings that were  
11 begun before its effective date.

12 SECTION 5. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

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

15

INTRODUCED BY: 



# S.B. NO. 2035

**Report Title:**

Insurance; Nondiscrimination; Transgender; Gender Transition Treatments

**Description:**

Prohibits 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 summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

