

## ACT 135

H.B. NO. 2084

A Bill for an Act Relating to Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that many health insurance policies and programs exclude transgender people from accessing care. Transgender people routinely experience serious and life-threatening discrimination, and the practice of denying health insurance coverage to a person based on gender identity or gender expression is against public policy.

The purpose of this Act is to prohibit the denial, exclusion, or limitation of health care services or treatment to a person on the basis of a person's actual gender identity or perceived gender identity.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 10A to be appropriately designated and to read as follows:

**“§431:10A- Non-discrimination on the basis of actual gender identity or perceived gender identity; coverage for services.** (a) No individual and group accident and health or sickness policy, contract, plan, or agreement that provides health care coverage shall discriminate 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.

- (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 person's or the person's family member's actual gender identity or perceived gender identity;
  - (2) Demanding or requiring a payment or premium that is based on a person's or the person's family member's actual gender identity or perceived gender identity;
  - (3) Designating a person's or the person's family member's actual gender identity or perceived gender identity as a preexisting condition to deny, cancel, or limit coverage; and
  - (4) Denying, 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; and
    - (B) Health care services that are ordinarily or exclusively available to individuals of one sex.

(c) 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.

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

(e) As used in this section unless the context requires otherwise:

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

“Gender transition” means the process of a person changing the person's outward appearance or sex characteristics to accord with the person's actual gender identity.

“Perceived gender identity” means an observer's impression of another person's actual gender identity or the observer's own impression that the person is male, female, a gender different from the gender designed at birth, a transgender person, or neither male nor female.

“Transgender person” means a person who has gender identity disorder or gender dysphoria, has received health care services related to gender transition, adopts the appearance or behavior of the opposite sex, or otherwise identifies as a gender different from the gender assigned to that person at birth.”

SECTION 3. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to article 1 to be appropriately designated and to read as follows:

**“§432:1- Non-discrimination on the basis of actual gender identity or perceived gender identity; coverage for services.** (a) No individual and group hospital and medical service policy, contract, plan, or agreement that provides health care coverage shall discriminate 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.

(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 person's or the person's family member's actual gender identity or perceived gender identity;
  - (2) Demanding or requiring a payment or premium that is based on a person's or the person's family member's actual gender identity or perceived gender identity;
  - (3) Designating a person's or the person's family member's actual gender identity or perceived gender identity as a preexisting condition to deny, cancel, or limit coverage; and
  - (4) Denying, 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; and
    - (B) Health care services that are ordinarily or exclusively available to individuals of one sex.
- (c) 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.
- (d) Any coverage provided shall be subject to copayment, deductible, and coinsurance provisions of an individual and group hospital and medical service policy, contract, plan, or agreement that are no less favorable than the copayment, deductible, and coinsurance provisions for substantially all other medical services covered by the policy, contract, plan, or agreement.
- (e) As used in this section unless the context requires otherwise:  
 "Actual gender identity" means a person's internal sense of being male, female, a gender different from the gender assigned at birth, a transgender person, or neither male nor female.  
 "Gender transition" means the process of a person changing the person's outward appearance or sex characteristics to accord with the person's actual gender identity.  
 "Perceived gender identity" means an observer's impression of another person's actual gender identity or the observer's own impression that the person is male, female, a gender different from the gender designed at birth, a transgender person, or neither male nor female.  
 "Transgender person" means a person who has gender identity disorder or gender dysphoria, has received health care services related to gender transition, adopts the appearance or behavior of the opposite sex, or otherwise identifies as a gender different from the gender assigned to that person at birth."

SECTION 4. Chapter 432D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§432D- Non-discrimination on the basis of actual gender identity or perceived gender identity; coverage for services.** (a) No health maintenance organization policy, contract, plan, or agreement shall discriminate 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.

(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 person's

or the person's family member's actual gender identity or perceived gender identity;

- (2) Demanding or requiring a payment or premium that is based on a person's or the person's family member's actual gender identity or perceived gender identity;
- (3) Designating a person's or the person's family member's actual gender identity or perceived gender identity as a preexisting condition to deny, cancel, or limit coverage; and
- (4) Denying, 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; and
  - (B) Health care services that are ordinarily or exclusively available to individuals of one sex.

(c) 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.

(d) Any coverage provided shall be subject to copayment, deductible, and coinsurance provisions of a health maintenance organization policy, contract, plan, or agreement that are no less favorable than the copayment, deductible, and coinsurance provisions for substantially all other medical services covered by the policy, contract, plan, or agreement.

(e) As used in this section unless the context requires otherwise:

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

“Gender transition” means the process of a person changing the person's outward appearance or sex characteristics to accord with the person's actual gender identity.

“Perceived gender identity” means an observer's impression of another person's actual gender identity or the observer's own impression that the person is male, female, a gender different from the gender designed at birth, a transgender person, or neither male nor female.

“Transgender person” means a person who has gender identity disorder or gender dysphoria, has received health care services related to gender transition, adopts the appearance or behavior of the opposite sex, or otherwise identifies as a gender different from the gender assigned to that person at birth.”

SECTION 5. Notwithstanding any other law to the contrary, the non-discrimination provisions required under sections 2, 3, and 4 of this Act shall apply to all health benefits plans under chapter 87A, Hawaii Revised Statutes, issued, renewed, modified, altered, or amended on or after January 1, 2017.

SECTION 6. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval; provided that sections 2, 3, and 4 shall apply to all policies, contracts, plans, or agreements issued or renewed in the State on or after January 1, 2017.

(Approved June 29, 2016.)

**Note**

1. Edited pursuant to HRS §23G-16.5.