
HOUSE BILL 1214

State of Washington

68th Legislature

2023 Regular Session

By Representative Walsh

1 AN ACT Relating to enacting the protecting children's bodies act;
2 amending RCW 48.43.0128 and 74.09.675; adding a new section to
3 chapter 43.70 RCW; creating a new section; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.70
6 RCW to read as follows:

7 (1) A health care provider may not provide gender transition
8 procedures to any individual who is under 18 years of age. A health
9 care provider may not refer any individual who is under 18 years of
10 age to any health care provider for gender transition procedures. A
11 health care provider is not prohibited from providing any of the
12 following procedures that are not gender transition procedures to an
13 individual who is under 18 years of age:

14 (a) Services to persons born with a medically verifiable disorder
15 of sex development, including a person with external biological sex
16 characteristics that are irresolvably ambiguous, such as being born
17 with 46 xx chromosomes with virilization or 46 xy chromosomes with
18 undervirilization or having both ovarian and testicular tissue;

19 (b) Services provided when a physician has otherwise diagnosed a
20 disorder of sexual development and has determined through genetic or
21 biochemical testing that the person does not have normal sex

1 chromosome structure, sex steroid hormone production, or sex steroid
2 hormone action;

3 (c) The treatment of any infection, injury, disease, or disorder
4 that has been caused by or exacerbated by the performance of gender
5 transition procedures, whether or not the gender transition procedure
6 was performed in accordance with state and federal law or whether or
7 not funding for the gender transition procedure is allowable under
8 this section; and

9 (d) Any procedure undertaken because the individual suffers from
10 a physical disorder, physical injury, or physical illness that would,
11 as certified by a physician, place the individual in imminent danger
12 of death or impairment of major bodily function unless surgery is
13 performed.

14 (2) Public funds may not be directly or indirectly used, granted,
15 paid, or distributed to any entity, organization, or individual that
16 provides gender transition procedures to an individual who is under
17 18 years of age. Health care services furnished in the following
18 situations may not include gender transition procedures to an
19 individual who is under 18 years of age:

20 (a) By or in a health care facility owned by this state or a
21 county or local government; and

22 (b) By a health care provider employed by the state or a county
23 or local government.

24 (3) Any referral for or provision of gender transition procedures
25 to an individual who is under 18 years of age is unprofessional
26 conduct and is subject to discipline by the appropriate disciplining
27 authority.

28 (4) A person may assert an actual or threatened violation of this
29 section as a claim or defense in a judicial or administrative
30 proceeding and obtain compensatory damages, injunctive relief,
31 declaratory relief, or any other appropriate relief. A person must
32 bring a claim for a violation of this section no later than two years
33 after the day the cause of action accrues. An individual who is under
34 18 years of age may bring an action throughout the individual's
35 minority through a parent or next friend and may bring an action in
36 the individual's own name on reaching 18 years of age until 20 years
37 after reaching 18 years of age.

38 (5) Notwithstanding any other law, an action under this section
39 may be commenced, and relief may be granted, in a judicial proceeding
40 without regard to whether the person commencing the action has sought

1 or exhausted available administrative remedies. In any action or
2 proceeding to enforce this section, a prevailing party who
3 establishes a violation of this section shall recover reasonable
4 attorney fees.

5 (6) The attorney general may bring an action to enforce
6 compliance with this section. This section does not deny, impair, or
7 otherwise affect any right or authority of the attorney general, this
8 state, or any agency, officer, or employee of this state, acting
9 under any law other than this section, to institute or intervene in
10 any proceeding.

11 (7) A violation of this section is a class C felony.

12 (8) For the purposes of this section:

13 (a) "Biological sex" means the biological indication of male and
14 female in the context of reproductive potential or capacity, such as
15 sex chromosomes, naturally occurring sex hormones, gonads and
16 nonambiguous internal and external genitalia present at birth,
17 without regard to an individual's psychological, chosen, or
18 subjective experience of gender.

19 (b) "Cross-sex hormones" means either of the following:

20 (i) Testosterone or other androgens given to biological females
21 in amounts that are larger or more potent than would normally occur
22 naturally in healthy biological sex females; or

23 (ii) Estrogen given to biological males in amounts that are
24 larger or more potent than would normally occur naturally in healthy
25 biological sex males.

26 (c) "Gender" means the psychological, behavioral, social, and
27 cultural aspects of being male or female.

28 (d) "Gender reassignment surgery" means any medical or surgical
29 service that seeks to surgically alter or remove healthy physical or
30 anatomical characteristics or features that are typical for an
31 individual's biological sex in order to instill or create
32 physiological or anatomical characteristics that resemble a sex
33 different from the individual's biological sex. "Gender reassignment
34 surgery" includes genital or nongenital gender reassignment surgery
35 performed for the purpose of assisting an individual with a gender
36 transition.

37 (e) "Gender transition" means the process in which a person goes
38 from identifying with and living as a gender that corresponds to the
39 person's biological sex to identifying with and living as a gender

1 different from the person's biological sex and may involve social,
2 legal, or physical changes.

3 (f) "Gender transition procedures":

4 (i) Means any medical or surgical service, including physician
5 services, inpatient and outpatient hospital services, or prescribed
6 drugs related to gender transition, that seeks to either:

7 (A) Alter or remove physical or anatomical characteristics or
8 features that are typical for the individual's biological sex; or

9 (B) Instill or create physiological or anatomical characteristics
10 that resemble a sex different from the individual's biological sex,
11 including medical services that provide puberty-blocking drugs,
12 cross-sex hormones, or other mechanisms to promote the development of
13 feminizing or masculinizing features in the opposite biological sex
14 or genital or nongenital gender reassignment surgery performed for
15 the purpose of assisting an individual with a gender transition.

16 (ii) Does not include any of the following:

17 (A) Services to persons born with a medically verifiable disorder
18 of sex development, including a person with external biological sex
19 characteristics that are irresolvably ambiguous, such as being born
20 with 46 xx chromosomes with virilization or 46 xy chromosomes with
21 undervirilization or having both ovarian and testicular tissue;

22 (B) Services provided when a physician has otherwise diagnosed a
23 disorder of sexual development and has determined through genetic or
24 biochemical testing that the person does not have normal sex
25 chromosome structure, sex steroid hormone production, or sex steroid
26 hormone action;

27 (C) The treatment of any infection, injury, disease, or disorder
28 that has been caused by or exacerbated by the performance of gender
29 transition procedures, whether or not the gender transition procedure
30 was performed in accordance with state and federal law or whether or
31 not funding for the gender transition procedure is allowable under
32 this section; and

33 (D) Any procedure undertaken because the individual suffers from
34 a physical disorder, physical injury, or physical illness that would,
35 as certified by a physician, place the individual in imminent danger
36 of death or impairment of major bodily function unless surgery is
37 performed.

38 (g) "Genital gender reassignment surgery" means a medical
39 procedure performed for the purpose of assisting an individual with a
40 gender transition, including any of the following:

1 (i) Surgical procedures such as penectomy, orchiectomy,
2 vaginoplasty, clitoroplasty, or vulvoplasty for biologically male
3 patients or hysterectomy or ovariectomy for biologically female
4 patients;

5 (ii) Reconstruction of the fixed part of the urethra with or
6 without a metoidioplasty;

7 (iii) Phalloplasty, vaginectomy, scrotoplasty, or implantation of
8 erection or testicular prostheses for biologically female patients;
9 and

10 (iv) Removing any healthy or nondiseased body part.

11 (h) "Health care provider" means a person regulated under Title
12 18 RCW to practice health or health-related services or otherwise
13 practicing health care services in this state consistent with state
14 law.

15 (i) "Nongenital gender reassignment surgery" means medical
16 procedures performed for the purpose of assisting an individual with
17 a gender transition, including either of the following:

18 (i) Surgical procedures for biologically male patients, such as
19 augmentation mammoplasty, facial feminization surgery, liposuction,
20 lipofilling, voice surgery, thyroid cartilage reduction, gluteal
21 augmentation, hair reconstruction, or various aesthetic procedures;
22 and

23 (ii) Surgical procedures for biologically female patients, such
24 as subcutaneous mastectomy, voice surgery, liposuction, lipofilling,
25 pectoral implants, or various aesthetic procedures.

26 (j) "Puberty-blocking drugs" means gonadotropin-releasing hormone
27 analogues or other synthetic drugs used in biological males to stop
28 luteinizing hormone secretion and testosterone secretion, or
29 synthetic drugs used in biological females which stop the production
30 of estrogens and progesterone, when used to delay or suppress
31 pubertal development in children for the purpose of assisting an
32 individual with a gender transition.

33 (k) "Public funds" means state, county, or local government
34 moneys, in addition to any department, agency, or instrumentality
35 authorized or appropriated under state law or derived from any fund
36 in which such moneys are deposited.

37 **Sec. 2.** RCW 48.43.0128 and 2021 c 280 s 3 are each amended to
38 read as follows:

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

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

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

18 (2) Nothing in this section may be construed to prevent a carrier
19 from appropriately utilizing reasonable medical management
20 techniques.

21 (3) (~~(Føø)~~) Except as provided in subsection (9) of this section,
22 for health plans issued or renewed on or after January 1, 2022:

23 (a) A health carrier may not deny or limit coverage for gender
24 affirming treatment when that treatment is prescribed to an
25 individual because of, related to, or consistent with a person's
26 gender expression or identity, as defined in RCW 49.60.040, is
27 medically necessary, and is prescribed in accordance with accepted
28 standards of care.

29 (b) A health carrier may not apply categorical cosmetic or
30 blanket exclusions to gender affirming treatment. When prescribed as
31 medically necessary gender affirming treatment, a health carrier may
32 not exclude as cosmetic services facial feminization surgeries and
33 other facial gender affirming treatment, such as tracheal shaves,
34 hair electrolysis, and other care such as mastectomies, breast
35 reductions, breast implants, or any combination of gender affirming
36 procedures, including revisions to prior treatment.

37 (c) A health carrier may not issue an adverse benefit
38 determination denying or limiting access to gender affirming
39 services, unless a health care provider with experience prescribing

1 or delivering gender affirming treatment has reviewed and confirmed
2 the appropriateness of the adverse benefit determination.

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

5 (4) For the purposes of this section, "gender affirming
6 treatment" means a service or product that a health care provider, as
7 defined in RCW 70.02.010, prescribes to an individual to treat any
8 condition related to the individual's gender identity and is
9 prescribed in accordance with generally accepted standards of care.
10 Gender affirming treatment must be covered in a manner compliant with
11 the federal mental health parity and addiction equity act of 2008 and
12 the federal affordable care act. Gender affirming treatment can be
13 prescribed to two spirit, transgender, nonbinary, intersex, and other
14 gender diverse individuals.

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

17 (6) By December 1, 2022, the commissioner, in consultation with
18 the health care authority and the department of health, must issue a
19 report on geographic access to gender affirming treatment across the
20 state. The report must include the number of gender affirming
21 providers offering care in each county, the carriers and medicaid
22 managed care organizations those providers have active contracts
23 with, and the types of services provided by each provider in each
24 region. The commissioner must update the report biannually and post
25 the report on its website.

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

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

33 (9) A health carrier may not reimburse or provide coverage for
34 gender affirming treatment to an individual who is under 18 years of
35 age.

36 **Sec. 3.** RCW 74.09.675 and 2021 c 280 s 4 are each amended to
37 read as follows:

38 (1) ~~((1))~~ Except as provided in subsection (6) of this section,
39 in the provision of gender affirming care services through programs

1 under this chapter, the authority, managed care plans, and providers
2 that administer or deliver such services may not discriminate in the
3 delivery of a service provided through a program of the authority
4 based on the covered person's gender identity or expression.

5 (2) (~~Beginning~~) Except as provided in subsection (6) of this
6 section, beginning January 1, 2022:

7 (a) The authority and any managed care plans delivering or
8 administering services purchased or contracted for by the authority
9 may not apply categorical cosmetic or blanket exclusions to gender
10 affirming treatment.

11 (b) Facial feminization surgeries and facial gender affirming
12 treatment, such as tracheal shaves, hair electrolysis, and other care
13 such as mastectomies, breast reductions, breast implants, or any
14 combination of gender affirming procedures, including revisions to
15 prior treatment, when prescribed as gender affirming treatment, may
16 not be excluded as cosmetic.

17 (c) The authority and managed care plans administering services
18 purchased or contracted for by the authority may not issue an adverse
19 benefit determination denying or limiting access to gender affirming
20 treatment, unless a health care provider with experience prescribing
21 or delivering gender affirming treatment has reviewed and confirmed
22 the appropriateness of the adverse benefit determination.

23 (d) If the authority and managed care plans administering
24 services purchased or contracted for by the authority do not have an
25 adequate network for gender affirming treatment, they shall ensure
26 the delivery of timely and geographically accessible medically
27 necessary gender affirming treatment at no greater expense than if
28 they had an in-network, geographically accessible provider available.
29 This includes, but is not limited to, providing case management
30 services to secure out-of-network gender affirming treatment options
31 that are available to the enrollee in a timely manner within their
32 geographic region. The enrollee shall pay no more than the same cost
33 sharing that the enrollee would pay for the same covered services
34 received from an in-network provider.

35 (3) For the purposes of this section, "gender affirming
36 treatment" means a service or product that a health care provider, as
37 defined in RCW 70.02.010, prescribes to an individual to support and
38 affirm the individual's gender identity. Gender affirming treatment
39 includes, but is not limited to, treatment for gender dysphoria.

1 Gender affirming treatment can be prescribed to two spirit,
2 transgender, nonbinary, and other gender diverse individuals.

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

5 (5) The authority shall adopt rules necessary to implement this
6 section.

7 (6) The authority and managed care plans administering services
8 purchased or contracted for by the authority may not reimburse or
9 provide coverage for gender affirming treatment to an individual who
10 is under 18 years of age.

11 NEW SECTION. **Sec. 4.** This act may be known and cited as the
12 protecting children's bodies act.

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