S-0516.1

SENATE BILL 5313

State of Washington 67th Legislature 2021 Regular Session

By Senators Liias and Randall

AN ACT Relating to health insurance discrimination; amending RCW 49.60.178 and 41.05.017; and reenacting and amending RCW 49.60.040 and 48.30.300.

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

Sec. 1. RCW 49.60.040 and 2020 c 85 s 1 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adverse benefit determination" means a denial, reduction, or termination of a benefit, or a failure to provide or make payment, in whole or in part, for a benefit, including a denial, reduction, termination, or failure to provide or make payment that is based on a determination of an enrollee's or applicant's eligibility to participate in a plan, and including, with respect to group health plans, a denial, reduction, or termination of a benefit, or a failure to provide or make payment, in whole or in part, for a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate.

(2) "Aggrieved person" means any person who: (a) Claims to have been injured by an unfair practice in a real estate transaction; or (b) believes that he or she will be injured by an unfair practice in a real estate transaction that is about to occur.

((~~(2)~~)) (3) "Any place of public resort, accommodation, assemblage, or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: PROVIDED, That nothing contained in this definition shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution.

((~~(3)~~)) (4) "Commission" means the Washington state human rights commission.

((~~(4)~~)) (5) "Complainant" means the person who files a complaint in a real estate transaction.

((~~(5)~~)) (6) "Covered multifamily dwelling" means: (a) Buildings consisting of four or more dwelling units if such buildings have one

or more elevators; and (b) ground floor dwelling units in other buildings consisting of four or more dwelling units.

((~~(6)~~)) (7) "Credit transaction" includes any open or closed end credit transaction, whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the regular course of any trade or commerce, including but not limited to transactions by banks, savings and loan associations or other financial lending institutions of whatever nature, stock brokers, or by a merchant or mercantile establishment which as part of its ordinary business permits or provides that payment for purchases of property or service therefrom may be deferred.

((~~(7)~~)) (8)(a) "Disability" means the presence of a sensory, mental, or physical impairment that:

(i) Is medically cognizable or diagnosable; or

(ii) Exists as a record or history; or

(iii) Is perceived to exist whether or not it exists in fact.

(b) A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity within the scope of this chapter.

(c) For purposes of this definition, "impairment" includes, but is not limited to:

(i) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, ((~~genitor-urinary [genitourinary]~~)) genitourinary, hemic and lymphatic, skin, and endocrine; or

(ii) Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(d) Only for the purposes of qualifying for reasonable accommodation in employment, an impairment must be known or shown through an interactive process to exist in fact and:

(i) The impairment must have a substantially limiting effect upon the individual's ability to perform his or her job, the individual's ability to apply or be considered for a job, or the individual's access to equal benefits, privileges, or terms or conditions of employment; or

(ii) The employee must have put the employer on notice of the existence of an impairment, and medical documentation must establish a reasonable likelihood that engaging in job functions without an accommodation would aggravate the impairment to the extent that it would create a substantially limiting effect.

(e) For purposes of (d) of this subsection, a limitation is not substantial if it has only a trivial effect.

((~~(8)~~)) (9) "Dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog that is trained for the purpose of assisting hearing impaired persons.

((~~(9)~~)) (10) "Dwelling" means any building, structure, or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

((~~(10)~~)) (11) "Employee" does not include any individual employed by his or her parents, spouse, or child, or in the domestic service of any person.

((~~(11)~~)) (12) "Employer" includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit.

((~~(12)~~)) (13) "Employment agency" includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer.

((~~(13)~~)) (14) "Families with children status" means one or more individuals who have not attained the age of eighteen years being domiciled with a parent or another person having legal custody of such individual or individuals, or with the designee of such parent or other person having such legal custody, with the written permission of such parent or other person. Families with children status also applies to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years.

((~~(14)~~)) (15) "Full enjoyment of" includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, color, sex, sexual orientation, national origin, or with any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, to be treated as not welcome, accepted, desired, or solicited.

((~~(15)~~)) (16) "Gender affirming treatment" means a service or product that a health care provider, as defined in RCW 70.02.010, prescribes to an individual to address the specific needs of that patient, to alleviate suffering, and/or address a condition, related to an individual's protected gender identity characteristics and/or allows the individual to acquire primary and/or secondary sex characteristics more aligned with an individual's gender identity. Gender affirming treatment includes, but is not limited to, treatment for gender dysphoria. Gender affirming treatment can be prescribed to two spirit, transgender, nonbinary, and other gender diverse individuals.

(17) "Health carrier" has the same meaning as in RCW 48.43.005 and, for the purpose of this chapter only, includes health plans offered under chapter 41.05 RCW.

(18) "Honorably discharged veteran or military status" means a person who is:

(a) A veteran, as defined in RCW 41.04.007; or

(b) An active or reserve member in any branch of the armed forces of the United States, including the national guard, coast guard, and armed forces reserves.

((~~(16)~~)) (19) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment.

((~~(17)~~)) (20) "Marital status" means the legal status of being married, single, separated, divorced, or widowed.

((~~(18)~~)) (21) "National origin" includes "ancestry."

((~~(19)~~)) (22) "Person" includes one or more individuals, partnerships, associations, organizations, corporations,

cooperatives, legal representatives, trustees and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof.

((~~(20)~~)) (23) "Premises" means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building.

((~~(21)~~)) (24) "Race" is inclusive of traits historically associated or perceived to be associated with race including, but not limited to, hair texture and protective hairstyles. For purposes of this subsection, "protective hairstyles" includes, but is not limited to, such hairstyles as afros, braids, locks, and twists.

((~~(22)~~)) (25) "Real estate transaction" includes the sale, appraisal, brokering, exchange, purchase, rental, or lease of real property, transacting or applying for a real estate loan, or the provision of brokerage services.

((~~(23)~~)) (26) "Real property" includes buildings, structures, dwellings, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein.

((~~(24)~~)) (27) "Respondent" means any person accused in a complaint or amended complaint of an unfair practice in a real estate transaction.

((~~(25)~~)) (28) "Service animal" means any dog or miniature horse, as discussed in RCW 49.60.214, that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The work or tasks performed by the service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing nonviolent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with

psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks. This subsection does not apply to RCW 49.60.222 through 49.60.227 with respect to housing accommodations or real estate transactions.

((~~(26)~~)) (29) "Sex" means gender.

((~~(27)~~)) (30) "Sexual orientation" means heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, "gender expression or identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.

Sec. 2. RCW 49.60.178 and 2020 c 52 s 9 are each amended to read as follows:

(1) It is an unfair practice for any person whether acting for himself, herself, or another in connection with an insurance transaction or transaction with a health maintenance organization to cancel or fail or refuse to issue or renew insurance or a health maintenance agreement to any person because of sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with disabilities: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this section. For the purposes of this section, "insurance transaction" is defined in RCW 48.01.060, health maintenance agreement is defined in RCW 48.46.020, and "health maintenance organization" is defined in RCW 48.46.020.

(2) For a health carrier offering a health plan issued or renewed on or after January 1, 2022:

(a) It is an unfair practice to issue an adverse benefit determination for gender affirming treatment when that care is prescribed to an individual because of, related to, or consistent

with a protected gender identity characteristic under RCW 49.60.040 and is medically necessary.

(b) It is unfair practice to apply categorical cosmetic or blanket exclusions to gender affirming treatment.

(c) Facial feminization surgeries and facial gender affirming treatment, such as tracheal shaves, hair electrolysis, and other care such as mastectomies, breast reductions, and breast implants, or any combination of gender affirming procedures, when prescribed as gender affirming treatment and are medically necessary, shall not be excluded as cosmetic.

(d) Health carriers must ensure that health care providers who have experience prescribing or delivering gender affirming treatment conduct the utilization reviews pursuant to RCW 48.43.005(45) for any claim for gender affirming treatment.

(e) If the health carrier does not have an adequate network for gender affirming treatment, the health carrier shall ensure the delivery of timely and geographically accessible medically necessary gender affirming treatment at no greater expense than if the health carrier had an in-network, geographically accessible provider available. This includes, but is not limited to, providing case management services to secure out-of-network gender affirming treatment options that are available to the enrollee in a timely manner within their geographic region. The enrollee shall pay no more than the same cost sharing that the enrollee would pay for the same covered services received from an in-network provider.

(3) Subsections (1) and (2) of this section apply to health plans under chapter 74.09 RCW and all employee benefit plans pursuant to RCW 41.05.075.

(4) The fact that such unfair practice may also be a violation of chapter 48.30, 48.44, or 48.46 RCW does not constitute a defense to an action brought under this section.

(5) The insurance commissioner, under RCW 48.30.300, and the human rights commission, under chapter 49.60 RCW, shall have concurrent jurisdiction under this section and shall enter into a working agreement as to procedure to be followed in complaints under this section.

(6) The insurance commissioner may adopt rules necessary for the implementation of this section.

Sec. 3. RCW 41.05.017 and 2019 c 427 s 21 are each amended to read as follows:

Each health plan that provides medical insurance offered under this chapter, including plans created by insuring entities, plans not subject to the provisions of Title 48 RCW, and plans created under RCW 41.05.140, are subject to the provisions of RCW 48.43.500, 70.02.045, 48.43.505 through 48.43.535, 48.43.537, 48.43.545, 48.43.550, 70.02.110, 70.02.900, 48.43.190, 48.43.083, 48.30.300, and chapter 48.49 RCW.

Sec. 4. RCW 48.30.300 and 2020 c 274 s 32 and 2020 c 228 s 8 are each reenacted and amended to read as follows:

Notwithstanding any provision contained in ((~~Title 48 RCW~~)) this title to the contrary:

(1) A person or entity engaged in the business of insurance in this state may not refuse to issue any contract of insurance or cancel or decline to renew such contract because of the sex, marital status, or sexual orientation as defined in RCW 49.60.040, or the presence of any disability of the insured or prospective insured. The amount of benefits payable, or any term, rate, condition, or type of coverage may not be restricted, modified, excluded, increased, or reduced on the basis of the sex, marital status, or sexual orientation, or be restricted, modified, excluded, or reduced on the basis of the presence of any disability of the insured or prospective insured.

(2) It is an unfair practice to issue an adverse benefit determination for gender affirming treatment when that care is prescribed to an individual because of, related to, or consistent with a protected gender identity characteristic under RCW 49.60.040 and is medically necessary.

(3) It is an unfair practice to apply categorical cosmetic or blanket exclusions to gender affirming treatment.

(4) Facial feminization surgeries and facial gender affirming treatment, such as tracheal shaves, hair electrolysis, and other care such as mastectomies, breast reductions, and breast implants, or any combination of gender affirming procedures, when prescribed as gender affirming treatment and are medically necessary, shall not be excluded as cosmetic.

(5) Health carriers must ensure that health care providers who have experience prescribing or delivering gender affirming treatment

conduct the utilization reviews pursuant to RCW 48.43.005(45) for any claim for gender affirming treatment.

(6) If the health carrier does not have an adequate network for gender affirming treatment, the health carrier shall ensure the delivery of timely and geographically accessible medically necessary gender affirming treatment at no greater expense than if the health carrier had an in-network, geographically accessible provider available. This includes, but is not limited to, providing case management services to secure out-of-network gender affirming treatment options that are available to the enrollee in a timely manner within their geographic region. The enrollee shall pay no more than the same cost sharing that the enrollee would pay for the same covered services received from an in-network provider.

(7) Subsections (1) through (6) of this section apply to health plans under chapter 74.09 RCW and all employee benefit plans pursuant to RCW 41.05.075.

(8) Except as provided in RCW 48.43.0128, 48.44.220, or 48.46.370, this subsection does not prohibit fair discrimination on the basis of sex, or marital status, or the presence of any disability when bona fide statistical differences in risk or exposure have been substantiated.

(9) For the purposes of this section, "gender affirming treatment" means a service or product that a health care provider, as defined in RCW 70.02.010, prescribes to an individual to address the specific needs of that patient, to alleviate suffering, and/or address a condition, related to an individual's protected gender identity characteristics and/or allows the individual to acquire primary and/or secondary sex characteristics more aligned with an individual's gender identity. Gender affirming treatment includes, but is not limited to, treatment for gender dysphoria. Gender affirming treatment can be prescribed to two spirit, transgender, nonbinary, and other gender diverse individuals.

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