SENATE COMMITTEE ON HEALTH
Senator Dr. Richard Pan, Chair

BILL NO: SB 923
AUTHOR: Wiener
VERSION: March 1, 2022
HEARING DATE: March 30, 2022
CONSULTANT: Teri Boughton

SUBJECT: Gender-affirming care

SUMMARY: Requires health plans and insurers to require all of its staff, contracted providers, and support staff who are in direct contact with enrollees or insureds to complete evidence-based cultural competency training for the purpose of providing trans-inclusive health care for individuals who identify as transgender, gender nonconforming, or intersex. Requires a health plan to allow provider searches by specialty on its public website for providers who offer and have provided gender-affirming services.

Existing law:

1) Establishes the Department of Managed Health Care (DMHC) to regulate health plans under the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act); California Department of Insurance (CDI) to regulate health and other insurance; and, the Department of Health Care Services (DHCS) to administer the Medi-Cal program. [HSC §1340, et seq., INS §106, et seq., and WIC §14000, et seq.]

2) Requires heath plans to publish and maintain a provider directory or directory with information on contracting providers that deliver health care services to the plan's enrollees, including those that accept new patients. Requires an online provider director to be available without any restrictions or limitations. Includes many requirements including weekly or more frequent updates if required by federal law. Requires a plan to take steps to ensure the accuracy of information concerning each listed provider and permits delay of payment or removal from the directory for providers who fail to respond to plan attempts to verify information. Requires health insurers to also publish and maintain provider directories and meet specified requirements. [HSC §1367.27 and INS §10133.15]

3) Requires every health plan to establish and maintain a grievance system approved by DMHC under which enrollees may submit their grievances, including online through the health plan's website. Establishes timelines and procedures for health plan response. Requires copies of grievances and responses to be kept for five years. Establishes enforcement actions and administrative penalties against plans regarding grievances reviewed and found by DMHC to be noncompliant. [HSC §1368 – 1368.04]

4) Requires DMHC, on or before March 1, 2022, to convene a Health Equity and Quality Committee to make recommendations for standard measures and benchmarks for assessing health equity and quality measures in health care delivery. Requires the committee to provide these recommendations to DMHC by September 30, 2022. [HSC §1399.870]

5) Requires DMHC, beginning in measurement year 2023, to establish standard measures and annual benchmarks for health equity and quality in health care delivery. [HSC §1399.871]

6) Requires health plans to comply with the standard measures and annual benchmarks and demonstrate compliance through annual reporting to DMHC. [HSC §1399.872]

7) Authorizes DMHC to impose progressive enforcement actions on plans that do not comply with the new health equity and quality reporting requirements, or fail to comply with the standards and benchmarks. [HSC §1399.874]

8) Requires, beginning in 2025 and annually thereafter, DMHC to publish a Health Equity and Quality Compliance Report. [HSC §1399.872]

9) Establishes the Lesbian, Gay, Bisexual, and Transgender Disparities Reduction Act, which requires, with some exceptions, and to the extent permissible by federal law, specified state entities, in the course of collecting demographic data directly or by contract as to the ancestry or ethnic origin of Californians, to collect voluntary self-identification information pertaining to sexual orientation and gender identity. [GOV §8310.8]

10) Requires the State Department of Public Health's (CDPH) Office of Health Equity to administer the Transgender Wellness and Equity Fund for purposes of funding grants to create programs, or funding existing programs, focused on coordinating trans-inclusive health care for individuals who identify as transgender, gender nonconforming, or intersex (TGI). [HSC §150900]

11) Requires grants to TGI-serving organizations for the purpose of increasing the capacity of health care professionals to effectively provide TGI health care and institute TGI-inclusive best practices. This includes the creation of educational materials or facilitation of capacity building trainings. [HSC §150900]

12) Requires grants to be available to a hospital, health care clinic, or other medical provider that currently provides gender-affirming health care services, such as hormone therapy or gender reassignment surgery, to continue providing those services, or to a hospital, health care clinic, or other medical provider that will establish a program that offers gender-affirming health care services and has an established relationship with a TGI-serving organization that will lead in establishing the program. [HSC §150900]

13) Requires a hospital, health care clinic, or other medical provider that applies for a grant to apply in partnership with a TGI-serving organization and consult with the TGI-serving organization throughout the process of creating and implementing its trans-inclusive health care program. [HSC §150900]

14) Defines a "TGI-serving organization" as an organization with a mission statement that centers around serving transgender, gender nonconforming, and intersex people, and where at least 65% of the clients of the organization are TGI. [HSC §150900]

This bill:

1) Requires, by July 31, 2023, a health plan's website to allow provider searches by specialty as a list of in-network providers who offer and have provided gender-affirming services, including, but not limited to, feminizing mammoplasty, male chest reconstruction, mastectomy, facial feminization surgery, hysterectomy, oophorectomy, penectomy, orchiectomy, feminizing genitoplasty, metoidioplasty, phalloplasty, scrotoplasty, voice

masculinization or feminization, hormone therapy related to gender dysphoria or intersex conditions, gender-affirming gynecological care, or voice therapy related to gender dysphoria or intersex conditions.

2) Requires a health plan, including a Medi-Cal managed care plan, and a health insurer, that issues, sells, renews, or offers contracts for health care coverage in this state, including a grandfathered health plan, but not including specialized health plan contracts or health insurance policies that provide only dental or vision services, to require all of its staff, contracted providers, and support staff who are in direct contact with enrollees in the delivery of care or services to complete evidence-based cultural competency training for the purpose of providing trans-inclusive health care for individuals who identify as TGI.

3) Defines evidence-based cultural competency training to include all of the following:

    a) Information about the effects, including, but not limited to, ongoing personal effects, of historical and contemporary exclusion and oppression of TGI communities;
    b) Information about communicating more effectively across gender identities, including TGI-inclusive terminology, using people's correct names and pronouns, even when they are not reflected in records or legal documents; avoiding language, whether verbal or nonverbal, that demeans, ridicules, or condemns TGI individuals; and avoiding making assumptions about gender identity by using gender-neutral language and avoiding language that presumes all individuals are heterosexual, cisgender or gender conforming, or non-intersex;
    c) Discussion on health inequities within the TGI community, including family and community acceptance;
    d) Perspectives of diverse, local constituency groups and TGI-serving organizations, including, but not limited to, the California Transgender Advisory Council;
    e) Recognition of the difference between personal values and professional responsibilities with regard to serving TGI people;
    f) Facilitation by TGI-serving organizations; and,
    g) Recommendations on administrative changes to make health care facilities more inclusive.

4) Requires use of any training curricula to be subject to approval by DMHC, CDI or DHCS, following stakeholder engagement with local constituency groups and TGI-serving organizations, including, but not limited to, the California Transgender Advisory Council.

5) Requires, after first-time completion of the evidence-based cultural competency training, in the form of initial basic training, an individual to complete a refresher course if a complaint has been filed, and a decision has been made in favor of the complainant, against that individual for not providing trans-inclusive health care, or on a more frequent basis if deemed necessary by the health plan/insurer or the departments for purposes of providing trans-inclusive health care.

6) Requires DMHC, CDI or DHCS to develop and implement procedures, and permits the departments to impose sanctions pursuant to existing law to ensure that a plan/insurer is compliant.

7) Requires DMHC, CDI or DHCS to require each plan/insurer to annually and publicly report all of the following:

a) How the plan/insurer met the requirements in 2) above;
b) How the plan/insure monitored the requirements in 2) above and the results of those monitoring efforts; and,
c) Any provider or quality-of-care complaints or grievances related to trans-inclusive health care, in accordance with any applicable federal and state privacy laws.

8) Establishes the following definitions:

a) "TGI" means transgender, gender nonconforming, or intersex;
b) "TGI-serving organization" has the same meaning as set forth in existing law, as specified;
c) "Trans-inclusive health care" means comprehensive health care that is consistent with the standards of care for individuals who identify as TGI, honors an individual's personal bodily autonomy, does not make assumptions about an individual's gender, accepts gender fluidity and nontraditional gender presentation, and treats everyone with compassion, understanding, and respect; and,
d) "Medi-Cal managed care plan" to mean any individual, organization, or entity that enters into a contract with DHCS to provide general health care services to enrolled Medi-Cal beneficiaries pursuant to specified law, a county Drug Medi-Cal organized delivery system, as specified, and a Program of All-Inclusive Care for the Elderly (PACE). Permits CDPH to sanction a PACE organization, as specified.

9) Requires DMHC, CDI or DHCS without taking any further regulatory action, to implement, interpret, or make specific this bill by means of plan letters or similar instructions, until regulations are adopted.

10) Requires DMHC, CDI or DHCS to adopt regulations for purposes of this section by July 1, 2024, and requires them to provide a status report to the Legislature on a semiannual basis until regulations are adopted.

FISCAL EFFECT: This bill has not been analyzed by a fiscal committee.

COMMENTS:

1) *Author's statement.* According to the author, this bill will help create a more inclusive and culturally competent healthcare system for TGI people across California. While all health plans are required to cover gender-affirming care, it can be difficult for TGI patients to actually find providers who routinely offer this care. Healthcare discrimination and a lack of access to culturally competent care is a major problem that many TGI people regularly face. While many providers work hard to treat TGI people with respect, going to the doctor should not mean facing additional discrimination or unnecessary hardship. No one should go to a doctor's appointment only to be misgendered, harassed, or even refused treatment. These traumatizing experiences keep people away from the doctor, and prevent them from receiving the care they need. The TGI Inclusive Health Care Act will help create a healthcare system that meets the needs of TGI people, and ensure that providers are trained to provide a more positive patient experience.

2) *Background provided by the author.* A 2020 small qualitative study on Transgender and gender-nonconforming (TGNC) patients published in the Permanente Journal with provider participants from urology, infectious disease, behavioral health, and internal medicine

concluded with three recommendations to improve the quality of TGNC care: 1) establish a dedicated case-management team; 2) provide access to more in-depth and meaningful training for providers, clinic staff, and administrative staff (and mandate certain basic training); and 3) allocate financial resources and enforce a policy of nondiscrimination.

3) *DMHC Health Equity and Quality Committee.* This committee is tasked with making recommendations to the DMHC Director for standard health equity and quality measures, including annual benchmark standards for assessing equity and quality in health care delivery. DMHC will establish standards for health plans to comply with starting in 2023 and will produce a Health Equity and Quality Compliance annual report beginning in 2025. This committee is scheduled to meet on March 24, 2022 and will be discussing guiding principles for focus areas and measure selection and begin discussions on quality measures, including a presentation sexual orientation and gender identity data collection.

4) *Enrollee grievances.* DMHC conducts compliance surveys which are like audits, and examines health plan practices related to access and availability of services, utilization management, quality improvement, continuity and coordination of care, language access, and enrollee grievances and appeals. When a survey identifies deficiencies, the DMHC requires corrective actions and may refer deficiencies to the Office of Enforcement for further investigation. Enforcement referrals typically occur when there are repeat deficiencies or when the health plan's corrective actions do not adequately correct the deficiencies. Survey findings, including corrective actions, are issued in public reports posted to the DMHC website. In 2019 DMHC reached an agreement with Anthem Blue Cross to correct the plan's repeated failures to properly identify and handle enrollee grievances and appeals, including a $2.8 million fine and an $8.4 million investment in the plan's consumer grievances and appeals process. The plan also agreed to several corrective actions to make important consumer-protective improvements to how the plan handles consumer grievances and appeals.

5) *Related legislation.* AB 2194 (Ward) prohibits the Board of Pharmacy from renewing a pharmacist or pharmacy technician license unless the applicant submits proof that the applicant has successfully completed a cultural competency course, as specified. Requires the course to focus on patients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, or queer, or who question their sexual orientation or gender identity and expression, as well as, health disparities faced by Black, Indigenous, and people of color. *AB 2194 is scheduled for hearing in the Assembly Business and Professions Committee on March 29, 2022.*

6) *Prior legislation.* AB 133 (Committee on Budget, Chapter 143, Statutes of 2021) among other provisions, adds new health equity and quality measures and other reporting to the Knox-Keene Act, including new responsibilities for DMHC and health plans.

   AB 2218 (Santiago, Chapter 181, Statutes of 2021) establishes the Transgender Wellness and Equity Fund within CDPH, for the purpose of funding grants to organizations serving people that identify as TGI, to create or fund TGI-specific housing programs and partnerships with hospitals, health care clinics, and other medical providers to provide TGI-focused health care, as defined, and related education programs for health care providers.

AB 241 (Kamlager, Chapter 417, Statutes of 2019) requires continuing education courses for physicians and surgeons, nurses, and physician assistants to include the understanding of implicit bias and the promotion of bias-reducing strategies.

AB 677 (Chiu, Chapter 744, Statutes of 2017) expands the list of state entities currently required to collect voluntary self-identification information on sexual orientation and gender identity to include various education and employment-related state agencies.

AB 959 (Chiu, Chapter 565, Statutes of 2015) enacts the Lesbian, Gay, Bisexual, and Transgender Disparities Reduction Act and requires four specified state entities – the Department of Health Care Services (DHCS), the Department of Public Health (DPH), the Department of Social Services (DSS), and the Department of Aging (CDA) – to collect voluntary self-identification information on sexual orientation and gender identity, beginning no later than July 1, 2018.

AB 496 (Gordon, Chapter 630, Statutes of 2014) adds to the medical board's cultural competency continuing medical education course requirement, information pertinent to the appropriate treatment of, and provision of care to, the lesbian, gay, bisexual, transgender, and intersex communities.

7) *Support.* The cosponsors of this bill write that despite representing a significant portion of the state's population, TGI people are not receiving the health care they need. Too often, TGI people encounter discrimination and difficulty accessing the health care. The National Center for Transgender Equality reported that one-third of all transgender individuals who had seen a health care professional in 2014 had at least one negative experience related to being transgender, with higher rates for transgender people of color and people with disabilities. These negative experiences include being refused treatment, verbally harassed, physically or sexually assaulted, or having to teach the provider about transgender people in order to receive appropriate care. The cosponsors write that existing law that prohibits discrimination on the basis of gender has not been sufficient to ensure TGI patients have equitable access to health care, and a significant number of providers still do not feel capable of providing care to transgender patients and a small but concerning number are not willing to care for transgender patients in need, even though transgender patients often require the same type of care as cisgender patients. TGI people have trouble finding providers to provide routine care, and finding providers who can provide gender affirming surgeries within their health plan can be even harder. These access issues exacerbate existing health disparities among TGI Californians. Compared with the general population, TGI people are more likely to experience chronic health conditions and also experience higher rates of health concerns related to HIV/AIDS, substance use, mental illness, and sexual and physical violence, as well as higher prevalence and earlier onset of disabilities.

8) *Support in concept.* The California Dental Association (CDA) supports the intent of providers and staff delivering TGI-inclusive health care services to the broader community, but there are certain implementation aspects that raise concerns and questions. For example, the competency training must be facilitated by TGI-serving organizations but given the hundreds of thousands of health care providers and staff throughout the state that would have to be trained, it is unclear whether there is an adequate infrastructure of appropriate organizations to provide this training. This issue becomes particularly relevant when examining rural areas of the state. Similarly, if TGI-serving organizations make recommendations on administrative changes for a more inclusive facility it is unclear if these

recommendations must be implemented and if so, which entity is responsible for making such changes. This bill requires health plans to ensure providers and staff receive the necessary training. Dental offices, like other health care providers, usually contract with multiple plans and some staff like hygienists and specialist dentists can work at multiple dental offices. Any implementation will need to ensure there isn't duplication of trainings required by each contracted plan. Additionally, various health care licensure boards have in-depth knowledge of continuing education requirements and logistics, and these existing continuing education pathways may be better suited to ensure providers and allied health professional have the appropriate training. While this bill impacts dentists in a limited capacity, mainly through Medi-Cal Dental Managed Care and PACE our concerns still remain.

9) *Opposition unless amended.* The California Medical Association (CMA) and the American College of Obstetricians and Gynecologists (ACOG) write that this bill is vague and would be challenging to implement. The bill lacks specifics and applies additional barriers to practicing medicine when California is facing a health care workforce shortage and patient access to care issues. CMA and ACOG indicate that current law has a mechanism in place to educate physicians and other providers on a consistent basis; it is the continuing medical education (CME) process. Physicians must complete 50 hours of CME over a two-year license renewal cycle. These courses are provided by state and nationally accredited programs and are audited to ensure compliance with existing standards. AB 496 required each CME course to include cultural and linguistic competency information specifically for the lesbian, gay, bisexual, transgender and intersex communities. Additionally, AB 241 added a new requirement for CME providers to include in each of their offered courses "the understanding of implicit bias and the promotion of bias-reducing strategies to address how unintended biases in decision-making may contribute to health disparities by shaping behavior and producing a difference in treatment." These existing laws ensure that every CME course includes a component of cultural and linguistic competency and implicit bias training that assists the physician and provider community in providing respectful, appropriate, and effective care. CMA and ACOG also raise concerns about the provider directory requirements. According to CMA, providers in many specialties can be included in the treatment and care for the TGI and larger LGBTQIA+ communities. Navigating these timely, sensitive and essential services is difficult. Some medical groups and health plans provide comprehensive websites that assist patients with the care they need, help them understand the complexities of the services and connect them with providers and centers of excellence that can provide that care. These websites provide patients with more in-depth medical information in addition to connecting the patient to the appropriate physician or provider. CMA and ACOG are requesting amendments that fully incorporate the TGI, and the larger LGBTQIA+ community, into the existing CME framework to ensure that physicians and health care providers receive the information necessary to integrate into their practice and provide the quality of care their patients deserve. Additionally, CMA and ACOG is requesting amendments that allow for websites such as those described above to satisfy the public website requirements in the bill. ACOG adds that this bill requires plans to make public any complaint made against a provider related to trans-inclusive health care; given the broad scope of this provision, ACOG would also ask that requirement also be removed.

Americas Health Insurance Plans, the Association of California Life and Health Insurance Companies, and California Association of Health Plans have raised concerns about the requirements on health plans and insurers to ensure that their contracted providers complete

this training, which could lead to a myriad of administrative and logistical challenges that could inadvertently limit enrollee access to care. They indicate that it would force health plans and insurers into the role of a de facto regulator of their contracted providers with respect to enforcing these training requirements, and this does not consider the many scenarios in which a health plan or insurer, through no fault of their own, may not be properly informed of a provider's training status. Health plans and insurers already experience challenges in receiving up-to-date information from their contracted providers for our provider directories, and we believe that this bill would only add to these challenges. This bill is also silent on what actions health plans or insurers would need to take if a provider failed submit their training status. This bill would make health plans and insurers liable, and subject to enforcement action, for the failure of a contracted provider to report their training status. Lastly, this bill includes a disjointed and confusing implementation schedule that would require health plans and insurers to comply with provisions of the bill before the development of the proposed training curricula is developed and approved by stakeholders and DMHC.

10) *Opposition.* The Concerned Women for America Legislative Action Committee (CWALAC) write that this bill violates the rights of healthcare plan staff, as well as staff of insurance providers, to exercise their religious liberty by opting out of such training. This offers one side of this controversial issue with an inherent bias in favor of the TGI lifestyle and against those who have concerns about compulsory agreement. Further, it imposes penalties for non-compliance and additional training if there is a claim of perceived offense. Training regarding human compassion and understanding would not violate the conscience or religious beliefs of staff and likely offer a better result. Respect for individual rights is the basis of a civil society. But when the law is used to violate the rights of freedom of speech and religion through compulsion, society begins to break down. An individual physician writes that gender-affirming care and preferred pronoun mandate are unconstitutional and not medically sound. The California Family Council writes the vast majority of minors with gender dysphoria desist by adulthood if they are not transitioned and given puberty blockers and cross-sex hormones. Because of this, many doctors and medical professionals are not comfortable providing transitioning drugs and doing transitioning surgeries, especially on minors, knowing the long-term side effects and the lack of hard scientific evidence regarding the efficacy of "gender-affirming" treatments. Knowing this, it is unconscionable that all of California's medical workers, numbering over a million, will be forced to sit through training from a non-medically trained transgender activist who might be hostile to their views. If someone complains about these doctors because of their unwillingness to do "gender-affirming" treatments, they will be forced to sit through the training all over again. Government officials are not allowed to compel private organizations to communicate government-sponsored messages to their employees. The California Family Council writes compelled speech is a violation of the First Amendment, and this was recently reaffirmed in 2018 by the US Supreme Court *NIFLA v. Becerra* decision, in which the court told California legislators they could not compel a prolife pregnancy clinic to communicate a government message regarding abortions.

11) *Policy comments.*

a) It may be more feasible for each provider to manage their own training requirements through continuing education and for providers to manage their own staff trainings rather than holding health plans and insurance companies responsible for the training of contracted providers and their staffs.

b) There are already processes in place for enrollees to submit grievances to health plans and for health plan grievance data to be made public. This bill goes a step further in requiring plans to make public any provider complaints related to trans-inclusive health care.

c) The bill may also need some clarifying amendments to ensure intent and implementability.

d) An alternative approach to this bill may be to direct DMHC to convene a subcommittee of its Health Equity and Quality Committee to develop a survey specific to consumer satisfaction around trans-inclusive health care. CDI and DHCS could also be required to adopt the survey. Survey findings could be aggregated and reported publicly.

SUPPORT AND OPPOSITION:

Support: Break the Binary LLC (co-sponsor)
California LGBTQ Health and Human Services Network (co-sponsor)
California Transcends (co-sponsor)
Equality California (co-sponsor)
Gender Justice LA (co-sponsor)
National Health Law Program (co-sponsor)
Orange County Trans Latinas (co-sponsor)
Queer Works (co-sponsor)
Rainbow Pride Youth Alliance (co-sponsor)
SF Office of Trans Initiatives (co-sponsor)
Trans Community Project (co-sponsor)
TransCanWork (co-sponsor)
Transgender Health and Wellness Center (co-sponsor)
TransPower Project (co-sponsor)
Tranz of Anarchii, INC (co-sponsor)
Unique Womens Coalition (co-sponsor)
Unity Hope (co-sponsor)
Western Center on Law and Poverty (co-sponsor)
Access Reproductive Justice
APLA Health
Bay Area Legal Aid
California Calls
California Commission on Aging
California Pan-Ethnic Health Network
California Physicians Alliance
California Rural Legal Assistance Foundation
CalVoices
Children Now
Community Health Initiative of Orange County
Community Legal Aid SoCal
County Behavioral Health Directors Association
DAP Health
End the Epidemics
GMLA: Health Professionals Advancing LGBTQ Equality
Health Access California
Legal Aid Society of San Diego INC

Los Angeles LGBT Center
National Association of Social Workers
Planned Parenthood Affiliates of California
Public Law Center
San Francisco AIDS Foundation
TransFamily Support Services

Oppose: American College of Obstetricians and Gynecologists District IX (unless amended)
American College of Pediatricians
Americas Health Insurance Plans (unless amended)
Association of California Life and Health Insurance Companies (unless amended)
California Association of Health Plans (unless amended)
California Family Council
California Medical Association (unless amended)
California Rheumatology Alliance
California Society of Plastic Surgeons
Concerned Women for America
Eight individuals

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