

Date of Hearing: June 21, 2022

ASSEMBLY COMMITTEE ON HEALTH  
Jim Wood, Chair  
SB 923 (Wiener) – As Amended May 31, 2022

**SENATE VOTE:** 28-7

**SUBJECT:** Gender-affirming care.

**SUMMARY:** Requires a health care service plan (health plan) or health insurer, as specified, to require all of its health plan or insurer staff who are in direct contact with enrollees or insureds in the delivery of care or enrollee or insured services, to complete evidence-based cultural competency training for the purpose of providing trans-inclusive health care for individuals who identify as transgender, gender diverse, or intersex (TGI), no later than January 1, 2024. Requires a health plan or insurer to, no later than July 31, 2023, include a link accessible from the plan or insurer's provider directory, and accessible through the plan or insurer's call center, to a list of in-network providers who offer and have provided gender-affirming services, as specified. Requires the California Health and Human Services Agency (CHHSA) to, no later than March 1, 2023, convene a working group of representatives, as specified, to develop quality standard for patient experience to measure cultural competency related to the TGI community and recommend training curriculum to provide trans-inclusive health care. Requires, for purposes of the cultural competency requirements of continuing medical education standards in existing law, understanding and applying culturally, ethnically, and sociologically inclusive data to the process of clinical care, including, as appropriate, information and evidence-based cultural competency training pertinent to the treatment of, and provision of care to, individuals who identify as lesbian, gay, bisexual, transgender, queer or questioning, asexual, intersex, or gender diverse. Specifically, **this bill:**

**Training Requirements**

- 1) Requires a health plan or health insurer that issues, sells, renews, or offers health plan contracts or policies, including a grandfathered health plan or insurer, and a Medi-Cal Managed Care (MCMC) plan, to require all of its health plan or insurer staff who are in direct contact with enrollees or insureds in the delivery of care or enrollee or insured services to complete evidence-based cultural competency training for the purpose of providing trans-inclusive health care for individuals who identify as TGI, no later than January 1, 2024. Excludes specialized health care contracts or insurance policies that provide only dental or vision services.
- 2) Requires an evidence-based cultural competency training implemented pursuant to 1) above 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 nonintersex;
- 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; and,
  - f) Facilitation by TGI-serving organizations.
- 3) Specifies that use of any training curricula for purposes of implementing 1) above be subject to approval by the Department of Managed Health Care (DMHC) or the California Department of Insurance (CDI), following stakeholder engagement with local constituency groups and TGI-serving organizations, including, but not limited to, the California Transgender Advisory Council.
  - 4) Provides that after first-time completion of the evidence-based cultural competency training, in the form of initial basic training, an individual described in 1) above 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 or insurer or the DMHC or CDI for purposes of providing trans-inclusive health care.
  - 5) Requires DMHC or CDI, no later than July 1, 2023, develop and implement procedures, and impose sanctions to ensure that a health plan or insurer is compliant with the requirements described 1) above. Requires the DMHC Director or CDI Commissioner to, in addition to requiring plan compliance regarding 1) above, to review individual case complaints alleging discrimination on the basis of gender identity and refer those complaints to the Department of Fair Employment and Housing. Requires the DMHC or CDI to, for improper denials, delays, or modifications of trans-inclusive care, review the complaints to determine whether any enforcement actions, including sanctions as specified, may be appropriate.
  - 6) Requires the DMHC or CDI to track and monitor complaints received related to trans-inclusive health care and publicly report this data with other complaint data in its annual report, on its website, or with other public reports containing complaint data.
  - 7) Requires the DMHC or CDI, 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. Requires DHCS to develop and implement procedures, and authorizes DHCS to impose sanctions, as specified.
  - 8) Requires the DMHC or CDI to adopt regulations for purposes of this section by July 1, 2024, as specified. Requires DMHC or CDI to provide a status report to the Legislature on a semiannual basis, as specified, until regulations are adopted.

### **Provider Directory**

- 9) Requires a health plan or insurer to, no later than July 31, 2023, include a link accessible from the plan or insurer's provider directory, and accessible through the plan or insurer's call center, to 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, gender-confirming facial 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. Requires a network provider to be permitted to volunteer their inclusion on this list and the list to be updated at least annually and when a provider requests to be included or excluded from the list.

### **Working Group**

- 10) Requires CHHSA to, no later than March 1, 2023, convene a working group of representatives from at least three TGI-serving organizations, at least three individual California residents who identify as TGI, health care providers, and one appointee representing each of the following state agencies:
  - a) DMHC;
  - b) CDI;
  - c) Department of Health Care Services (DHCS);
  - d) The California Health Benefit Exchange (the Exchange or Covered California); and,
  - e) CalPERS.
- 11) Requires the working group to be charged with developing a quality standard for patient experience to measure cultural competency related to the TGI community and recommend training curriculum to provide trans-inclusive health care. Requires input from health care providers, experts on quality measurement, additional stakeholders, and other entities the agency deems necessary. Requires the working group to conduct at least four listening sessions across the state with patients from the TGI community. Requires a quality metric to be developed no later than March 1, 2024, with measurement to begin no later than January 1, 2025.
- 12) Defines the following:
  - a) "TGI" as transgender, gender diverse or intersex;
  - b) "TGI-serving organization" as the same meaning as set forth under existing law at 9) below;
  - c) "Trans-inclusive health care" as 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” as an individual, organization, or entity that enters into a contract with DHCS to provide general health care services to enrolled Medi-Cal beneficiaries as specified. Applies MCMC plan requirements to a Program of All-Inclusive Care for the Elderly organization, as specified.

### **Continuing Medical Education**

- 13) Requires, for purposes of the existing cultural competency requirements of continuing medical education standards, understanding and applying culturally, ethnically, and sociologically inclusive data to the process of clinical care, including, as appropriate, information and evidence-based cultural competency training pertinent to the treatment of, and provision of care to, individuals who identify as lesbian, gay, bisexual, transgender, queer or questioning, asexual, intersex, or gender diverse. This includes processes specific to those seeking gender-affirming care services.
- a) Allows an evidence-based cultural competency training under 13) above to include all of the following:
  - i) Information about the effects, including, but not limited to, ongoing personal effects of historical and contemporary exclusion and oppression of TGI communities;
  - ii) 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 nonintersex;
  - iii) Discussion on health inequities within the TGI community, including family and community acceptance;
  - iv) Perspectives of diverse, local constituency groups and TGI-serving organizations including, but not limited to, the California Transgender Advisory Council;
  - v) Recognition of the difference between personal values and professional responsibilities with regard to serving TGI people; and,
  - vi) Recommendations on administrative changes to make health care facilities more inclusive.

### **EXISTING LAW:**

- 1) Prohibits, pursuant to the federal Patient Protection and Affordable Care Act (ACA), discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities. Prohibits an individual from being excluded from participating in any federally funded or administered health program or activity except as permitted under the health insurance reforms of the ACA.
- 2) Establishes DMHC to regulate health plans, and the CDI to regulate health insurers. Establishes the Medi-Cal Program, administered by DHCS, to provide comprehensive health benefits to low-income individuals who meet specified eligibility criteria.

- 3) Requires health plans and health insurers providing health coverage in the individual and small group markets to cover, at a minimum, essential health benefits (EHBs), including the 10 EHB benefit categories in the ACA, and consistent with California's EHB benchmark plan, the Kaiser Foundation Health Plan Small Group HMO 30 plan (Kaiser benchmark), as specified in state law.
- 4) Specifies EHBs in the following 10 categories: ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and, pediatric services, including oral and vision care.
- 5) Requires health plans to provide basic health care services, including: physician services; hospital inpatient and ambulatory care services; diagnostic laboratory and diagnostic and therapeutic radiologic services; home health services; preventive health services; emergency health care services; and, hospice care.
- 6) Requires DMHC to develop and adopt regulations to ensure that enrollees have access to needed health care services in a timely manner and consider the following as indicators of timeliness of access to care:
  - a) Waiting times for appointments with physicians, including primary care and specialty physicians;
  - b) Timeliness of care in an episode of illness, including the timeliness of referrals and obtaining other services, if needed; and,
  - c) Waiting time to speak to a physician, registered nurse, or other qualified health professional acting within his or her scope of practice who is trained to screen or triage an enrollee who may need care.
- 7) Requires DMHC, in developing these timely access standards, to consider clinical appropriateness, the nature of the specialty, the urgency of care, and the requirements of other provisions of law, including provisions governing utilization review that may affect timeliness of access.
- 8) Requires a health plan, and a health insurer that contracts with providers, as specified, to publish and maintain a provider directory or directories with information on contracting providers that deliver health care services to the health plan's enrollees or the health insurer's insureds, and requires the health plan or health insurer to make an online provider directory or directories available on the health plan or health insurer's internet website, as specified.
- 9) Establishes the Transgender Wellness and Equity Fund, administered by the Office of Health Equity within the Department of Public Health, for the purpose of grant funding focused on coordinating trans-inclusive health care for individuals who identify as TGI. Defines a "TGI-serving organization" as an organization with a mission statement that centers around serving TGI people, and where at least 65% of the clients of the organization are TGI.
- 10) Establishes continuing medical education standards that requires education courses to contain curriculum that includes cultural and linguistic competency in the practice of medicine.

- 11) Establishes the Department of Fair Employment and Housing state agency charged with enforcing California's civil rights laws.

**FISCAL EFFECT:** According to the Senate Appropriations Committee,

- 1) DMHC. According to the DMHC, \$1.4 million and 6.5 personnel years (PYs) in fiscal year (FY) 2022-23; \$1.8 million and 7.8 PYs in FY 2023-24; \$1.7 million and 7.2 PYs in FY 2024-25; and \$1.7 million and 7.0 PYs in FY 2025-26 and annually thereafter. (Managed Care Fund)
- 2) CDI. According to the CDI, \$85,000 FY 2022-23, \$727,000 FY 2023-24, and \$34,000 for FY 2024-25 and ongoing. (Insurance Fund)
- 3) DHCS. Staff estimate unknown, potentially significant costs in workload to conduct oversight of its MCMC plans to require that managed care plan staff complete specified cultural competency training, track and monitor specified complaints, and compile complaint data and prepare the report.
- 4) CHHSA. Staff estimates unknown, potentially significant costs (millions, General Fund) to establish and operate the workgroup, including hosting the four listening sessions. Costs would include administrative and technical staff, as well as operating expenses and equipment, as well as possible per diem and travel reimbursement costs for workgroup members.
- 5) Covered California and CalPERS. Staff anticipates indeterminate costs (tens of thousands, special fund) for their participation in the working group.

**COMMENTS:**

- 1) **PURPOSE OF THIS BILL.** 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 author concludes that 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.** According to the author, 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. In addition, a survey of providers across specialty areas have expressed interest in more training in care for patients who are transgender and gender diverse care.
  - a) The Williams Institute at the University of California, Los Angeles School of Law (which conducts independent research on sexual orientation and gender identity law and public policy) estimates that in the state of California, at least 218,400 individuals identify as

transgender. The 2015 U.S. Transgender Survey (USTS) is the largest survey examining the experiences of transgender people in the United States, with 27,715 respondents from all 500 states, the District of Columbia, American Samoa, Guam, Puerto Rico, and U.S. military bases overseas. Conducted in the summer of 2015 by the National Center for Transgender Equality, the USTS was an anonymous, online survey for transgender adults (18 and older) in the United States, available in English and Spanish. Key findings include:

- i) Respondents reported high levels of mistreatment, harassment, and violence in every aspect of life. One in 10 (10%) of those who were out to their immediate family reported that a family member was violent towards them because they were transgender, and 8% were kicked out of the house because they were transgender.
  - ii) The majority of respondents who were out or perceived as transgender while in school (K–12) experienced some form of mistreatment, including being verbally harassed (54%), physically attacked (24%), and sexually assaulted (13%) because they were transgender. Further, 17% experienced such severe mistreatment that they left a school as a result.
  - iii) In the year prior to completing the survey, 30% of respondents who had a job reported being fired, denied a promotion, or experiencing some other form of mistreatment in the workplace due to their gender identity or expression, such as being verbally harassed or physically or sexually assaulted at work.
  - iv) In the 2015 survey, one-third (33%) of those who saw a health care provider in the past year reported having at least one negative experience related to being transgender, with higher rates for 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. Lack of access to healthcare often leads TGI people, specifically transgender women of color, to rely on unregulated, underground resources as their primary source of transition-related care and leads to undiagnosed depression and other mental illnesses. For non-binary transgender people, access to gender affirming care is especially difficult because of provider unfamiliarity with genders outside of the traditional gender binary.
  - v) Nearly one-quarter (23%) of respondents experienced some form of housing discrimination in the past year, such as being evicted from their home or denied a home or apartment because of being transgender. Almost one-third (30%) of respondents have experienced homelessness at some point in their lives. In the past year, one in eight (12%) respondents experienced homelessness because of being transgender. More than one-quarter (26%) of those who experienced homelessness in the past year avoided staying in a shelter because they feared being mistreated as a transgender person. Those who did stay in a shelter reported high levels of mistreatment: seven out of 10 (70%) respondents who stayed in a shelter in the past year reported some form of mistreatment, including being harassed, sexually or physically assaulted, or kicked out because of being transgender.
- b) Patient Experience. A 2018 article entitled, “Primary Care Clinicians’ Willingness to Care for Transgender Patients” noted that transgender patients report negative

experiences in health care settings, but little is known about clinicians' willingness to see transgender patients. The authors surveyed 308 primary care clinicians in an integrated Midwest health system and 53% responded. Most respondents were willing to provide routine care to transgender patients (85.7%) and Papanicolaou (Pap) tests (78.6%) to transgender men. Willingness to provide routine care decreased with age; willingness to provide Pap tests was higher among family physicians, those who had met a transgender person, and those with lower transphobia. Medical education should address professional and personal factors related to caring for the transgender population to increase access. Transgender individuals generally report negative health care experiences and often avoid seeking health care due to fear of discrimination.

- c) The California Transgender Counsel. In late 2021, Lieutenant Governor Eleni Kounalakis established a council of transgender leaders to create a dialogue between state leaders and the transgender community in California. Believed to be the first of its kind in the nation, the council includes transgender activists, advocates, and elected officials from across the state. Its goal is to bring attention to the issues faced by the transgender community by inviting stakeholders in advocacy, government, and different industry sectors to hear directly from the council. The advisory council will meet regularly and is comprised of transgender leaders from across the state.

- 3) **SUPPORT.** The Binary LLC, California LGBTQ Health and Human Services Network, California TRANScends, Equality California, Gender Justice LA, National Health Law Program, Orange County TransLatinas, Queer Works, Rainbow Pride Youth Alliance, San Francisco Office of Transgender Initiatives, The TransPower Project, TransCanWork, Trans Community Project, TransFamily Support Services, Transgender Health and Wellness Center, Tranz of Anarchii INC, Unique Woman's Coalition (UWC), Unity Hope, and Western Center on Law & Poverty (support coalition) state that over 1 million Californians identify as TGI. In California, about 218,400 adults identify as transgender, and more than one in four or 796,000 teens are viewed as gender nonconforming at school. 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 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. Existing law that prohibits discrimination on the basis of gender has not been sufficient to ensure TGI patients have equitable access to health care. 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. Based on a recent survey of a small number of providers, nearly 15% of providers are unwilling to provide routine care, with that number increasing for specific services. Fear of discrimination resulted in 28% of transgender individuals postponing or not receiving necessary medical care. In 2019, 44% of TGI people who were surveyed in the #Out4MentalHealth Community survey reported traveling farther than 30 minutes to see a primary care provider. 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. The supporter coalition concludes that these access issues exacerbate existing health disparities among TGI Californians.

- 4) **OPPOSE.** Can I Get a Witness writes that this bill will make it impossible for parents to be able to safeguard their children from irreversible damage based upon feelings that are transitory and that this bill is unconstitutional.
- 5) **RELATED LEGISLATION.** AB 2194 (Ward) requires pharmacists and pharmacy technicians to complete at least one hour of continuing education through a cultural competency course focused on LGBTQ+ patients. AB 2194 is pending in Senate Appropriations Committee.
- 6) **PREVIOUS LEGISLATION.** AB 2218 (Santiago), Chapter 181, Statutes of 2020, establishes the Transgender Wellness and Equity Fund, under the administration of the office, for the purpose of funding grants, upon appropriation by the Legislature, 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.
- 7) **AUTHOR'S AMENDMENTS.** The author proposes the following amendments to address concerns regarding the provider directory disclosure:
- a) Require a health plan, insurer, or MCMC plan to include information on or accessible from the plan's provider directory, and accessible through the plan's call center, that identifies which of a plan's in-network providers have affirmed that they offer and have provided gender-affirming services, as specified;
  - b) Require this information to be updated when an in-network provider requests its inclusion or exclusion as a provider that offers and provides gender-affirming services; and,
  - c) Specify that nothing in this bill alters any business establishment's obligation to provide full and equal services to customers or patients regardless of their sex and other protected characteristics, pursuant to the Unruh Civil Rights Act and other applicable law.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

ACLU California Action  
 Alliance of Californians for Community Empowerment (ACCE) Action  
 APLA Health  
 Break the Binary LLC  
 California LGBTQ Health and Human Services Network  
 California Nurse Midwives Association (CNMA)  
 California Pan - Ethnic Health Network  
 California Teachers Association  
 California Transcends  
 Children Now  
 Desert Aids Project D/b/a Dap Health  
 Equality California  
 Gender Justice LA  
 GLMA: Health Professionals Advancing LGBTQ Equality

Health Access California  
Justice in Aging  
Latino Coalition for A Healthy California  
Leadingage California  
National Association of Social Workers, California Chapter  
National Health Law Program  
Orange County TransLatinas  
Queer Works  
Rainbow Pride Youth Alliance  
Sf Office of Trans Initiatives  
Trans Can Work  
Trans Community Project  
Trans Power Project  
Transfamily Support Services  
Transgender Health and Wellness Center  
Tranz of Anarchii INC  
Unique Woman's Coalition  
Unity Hope  
Western Center on Law & Poverty, INC.

**Opposition**

California Family Council  
Can I Get a Witness  
Capitol Resource Institute  
Concerned Women for America  
International Federation for Therapeutic and Counselling Choice  
Our Duty  
Two individuals

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