SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 418 (Menjivar)
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Hearing Date: April 22, 2025
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Health care coverage: nondiscrimination

DIGEST

This bill prohibits a health care service plan or a health insurer licensed in the state from excluding, denying benefits to, or otherwise discriminating against a subscriber, enrollee, policyholder, or insured on the basis of race, color, national origin, age, disability, or sex, as defined.

EXECUTIVE SUMMARY

Section 1557 of the Affordable Care Act (Section 1557) prohibits discrimination in the provision of health insurance or health care coverage on the basis of race, color, national origin, age, disability, or sex. (*See* 42 U.S.C. § 18116.) In January, however, President Donald Trump signed Executive Order 14187, which denies the existence of transgender and nonbinary individuals, ignores the recommendations of medical experts, and attempts to prevent minors and 18-year-old adults from obtaining medically prescribed gender-affirming care. The Executive Order also instructed the Department of Health and Human Services to withdraw guidance clarifying that Section 1557's prohibition on sex-based discrimination extends to discrimination on the basis of gender identity and gender expression.

This bill is intended codify Section 1557 in state law. Section 1557 prohibits a health care service plan or health insurer from excluding a subscriber or enrollee from, or denying them a benefit or coverage under, a health care service plan or health insurance plan, on the basis of the person's race, color, national origin, age, disability, or sex. The bill also clarifies that "sex" includes a person's gender identity and gender expression, and requires health care service plan providers and health insurers to provide specified disclosures to their subscribers and enrollees relating to their right to be free of discrimination. The bill's protections would be in addition to existing antidiscrimination laws, and are intended to complement, rather than supplant, those

existing laws. The author has agreed to minor amendments relating to the disclosure requirements and to clarify that the bill's provisions are cumulative to existing law.

This bill is sponsored by the Women's Foundation California, Solis Policy Institute and is supported by over 40 medical, nonprofit, and community organizations, as well as 5 individuals. This bill is opposed by the California Catholic Conference. The Senate Health Committee passed this bill with a vote of 9-0.

PROPOSED CHANGES TO THE LAW

Existing constitutional law:

1) Provides that the legislative powers of the United States are vested in the United States Congress, and that every bill that passes the House of Representatives and the Senate and is signed by the President shall become law. (U.S. Const., art. I, §§ 1, 7 cl. 2.)

2) Provides that individuals are guaranteed the right to equal protection under federal, state, and local laws. (U.S. Const., 5th & 14th amends; *Adarand Constructors, Inc. v. Pena* (1995) 515 U.S. 200, 216-217.)

Existing federal law:

1) Establishes the Affordable Care Act (ACA), which sets national requirements for the provision of health insurance. (Pub. L. No. 111-148 (Mar. 23, 2010).)

2) Establishes, in Section 1557 of the ACA, that an individual shall not, on the basis of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity that receives federal financial assistance or under any program or activity that is administered by a federal entity. (42 U.S.C. § 18116; *see* 20 U.S.C. § 1681; 29 U.S.C. § 794; 42 U.S.C §§ 2000d, 6101.)

Existing state law:

1) Defines the following relevant terms:
    a) "Enrollee" means a person who is enrolled in a health care service or specialized health care service plan and who is a recipient of services from the plan. (Health & Saf. Code, § 1345(c).)
    b) "Health care service plan" or "specialized health care service plan" means either (1) any person who undertakes to arrange for the provision of health care services to subscribers or enrollees, or to pay for or to reimburse any part of the costs of those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees, or (2) any person, whether

located within or outside of this state, who solicits or contracts with a subscriber or enrollee in this state to pay for or reimburse any part of the cost of, or who takes to arrange or arranges for, the provision of health care services that are to be provided wholly or in part in a foreign country in return for a prepaid or periodic charge paid by or on behalf of the subscriber or enrollee. (Health & Saf. Code, § 1345(f).)

c) "Provider" means any professional person, organization, health facility, or other person or institution licensed by the state to deliver or furnish health care services. (Health & Saf. Code, § 1345(i).)
d) "Subscriber" means the person who is responsible for payment to a plan or whose employment or other status, except for family dependency, is the basis for eligibility for membership in the plan. (Health & Saf. Code, § 1345(p).)
e) "Health insurance" means an individual or group disability insurance policy that provides for hospital, medical, or surgical benefits, subject to specified exceptions. (Ins. Code, § 106(b).)

2) Provides for regulation of health care service plans and health insurance plans as follows:
   a) The Department of Managed Health Care regulates health care service plans under the Knox-Keene Health Care Service Plan Act of 1975. (Health & Saf. Code, div. 2, ch. 2.2, §§ 1340 et seq.)
   b) The Department of Insurance regulates health insurers pursuant to the Insurance Code. (Ins. Code, div. 3, §§ 12900 et seq.)

3) Prohibits a health care service plan or specialized health care service plan from denying a contract, modifying the terms of a contract, or limiting a contract because of the race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, or age of any contracting party, prospective contracting party, or person reasonably expected to benefit from that contract as a subscriber, enrollee, member, or otherwise.
   a) A health care service plan may not utilize marital status, living arrangements, occupation, sex, beneficiary designation, ZIP codes, or other territorial classification, or any combination thereof, for the purpose of establishing sexual orientation.
   b) "Sex" includes gender identity and gender expression. (Health & Saf. Code, § 1365.5.)

4) Prohibits a health insurer from failing to refuse to accept an application for that insurance, issuing that insurance to an applicant thereof, or issuing or canceling that insurance under conditions less favorable to the insured than in other comparable cases, except for reasons applicable alike to persons of every race, color, religion, sex, gender, gender identity, gender expression, national origin, ancestry, or sexual orientation; and prohibits race, color, religion, national origin, ancestry, or sexual

orientation from constituting a condition or risk for which a higher rate, premium, or charge may be required of the insured for that insurance. (Ins. Code, § 10140(a).)

a) A health care service plan may not utilize marital status, living arrangements, occupation, sex, beneficiary designation, ZIP codes, or other territorial classification, or any combination thereof, for the purpose of establishing sexual orientation.
b) "Sex" includes gender identity and gender expression. (Ins. Code, § 10140.)

This bill:

1) Provides that a subscriber or enrollee shall not be excluded from enrollment or participation in, be denied the benefits of, or be subjected to discrimination by, any health care service plan or health insurer licensed in this state on the basis of race, color, national origin, age, disability, or sex.

2) Provides that discrimination on the basis of sex pursuant to 1) includes, but is not limited to, discrimination on the basis of sex characteristics, including intersex traits; pregnancy or related conditions; sexual orientation; gender identity; and sex stereotypes.

3) Provides that, in providing access to health programs and activities, including arranging for the provision of health care services, a health care service plan or a health insurer shall not:
   a) Deny or limit health care services, including those that have been typically or exclusively provided to, or associated with, individuals of one sex, to an individual based upon the individual's sex assigned at birth, gender identity, or gender otherwise recorded.
   b) Deny or limit, on the basis of an individual's sex assigned at birth, gender identity, or gender otherwise recorded, a health care professional's ability to provide health care services if the denial or limitation has the effect of excluding individuals from participation in, denying them the benefits of, or otherwise subjecting them to discrimination on the basis of sex under a covered health care service plan or covered health insurance policy.
   c) Adopt or apply any policy or practice of treating individuals differently or separating them on the basis of sex in a manner that subjects any individual to more than de minimis harm, including by adopting a policy of engaging in a practice that prevents an individual from participating in a health care service plan or health insurance policy consistent with the individual's gender identity.
   d) Deny or limit health care services sought for purpose of gender transition or other gender-affirming care that the health care service plan or health insurance policy would otherwise cover if that denial or limitation is based on an individual's sex assigned at birth, gender identity, or gender otherwise recorded.

4) Provides that a health care service plan, in providing or arranging for the provision of health care services or other health-related coverage, or a health insurer, in providing or administering health insurance coverage or other health-related coverage, shall not do any of the following:
   a) Deny, cancel, limit, or refuse to issue or renew health care plan service enrollment or other health-related coverage, or deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, on the basis of race, color, national origin, sex, age, disability, or any combination thereof.
   b) Have or implement marketing practices or benefit designs that discriminate on the basis of race, color, national origin, sex, age, disability, or any combination thereof, in health care service plan coverage, insurance coverage, or other health-related coverage.
   c) Deny or limit coverage, deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, to an individual based upon the individual's sex assigned at birth, gender identity, or gender otherwise recorded.
   d) Have or implement a categorical coverage exclusion or limitation for all health care services related to gender transition or other gender-affirming care.
   e) Otherwise deny or limit coverage, deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, for specific health care services related to gender transition or other gender-affirming care if such denial, limitation, or restriction results in discrimination on the basis of sex.
   f) Have or implement benefit designs that do not provide or administer health care service plan coverage, health insurance coverage, or other health-related coverage in the most integrated setting appropriate to the needs of qualified individuals with disabilities, including practices that result in the serious risk of institutionalization or segregation.

5) Provides that 1)-4) do not require access to, or coverage of, a health care service for which the health care service plan or health insurer has a legitimate, nondiscriminatory reason for denying or limiting access to, or coverage of, the health care service or determining that the health care service is not clinically appropriate for a particular individual, or fails to meet applicable coverage requirements, including reasonable medical management techniques, such as medical necessity requirements. A health care plan or health insurer's determination under this subdivision shall not be based on unlawful animus or bias, or constitute a pretext for discrimination.

6) Requires a health care service plan or health insurer's evidences of coverage, disclosure form, and combined evidence of coverage and disclosure form to include

all of the following information in a notice to enrollees or insureds regarding the coverage requirements pursuant to 1):

a) A statement that the health care service plan or health insurer does not discriminate on the basis of sex.
b) How to file a grievance regarding sex-based discrimination.
c) The health care service plan or health insurer's website where an enrollee may file a grievance, if available.
d) The health care service plan or health insurer's telephone number that an enrollee may use to file a grievance regarding sex-based discrimination.

7) Provides that 1)-6) do not limit the authority of the State Director of Health Care Service or the Insurance Commissioner, a health care service plan or health insurer's duties, or enrollees' or insureds' rights under specified existing law.

COMMENTS

1. Author's comment

According to the author:

> Within the first month of the Trump Administration, the president issued sixty-four executive orders. Executive Order 14187 directed the Secretary of Health and Human Services to review the legality of Section 1557 of the ACA, which currently makes it unlawful for any healthcare provider who receives federal funding to refuse to treat an individual based on race, color, national origin, sex, age or disability. This rule is crucial in supporting multiple vulnerable communities from discrimination. This EO would affect a woman's right to reproductive services, impact an individual's ability to seek gender-affirming care, and hinder an undocumented individuals' ability to seek healthcare services, along with many others who have historically struggled to access medical care. These executive orders have already had immediate negative impacts. For example, the Children's Hospital of Los Angeles temporarily paused their hormonal therapy services for patients under the age of 19 who were seeking these services for gender-affirming care. As the Trump Administration attempts to roll back these essential protections, California needs to reaffirm these protections. With SB 418, we are taking a proactive step to codify these protections in state law to ensure healthcare access for all in California.

2. Federal law prohibits health insurers who receive federal funding from discriminating on the basis of race, color, national origin, sex, age, or disability

Section 1557 of the Affordable Care Act (ACA) (Section 1557) prohibits any health care provider or insurer that receives federal funding from discriminating against a patient

on the basis of race, color, national origin, sex, age, or disability.[1] This prohibition on discrimination on the basis of sex is achieved through a statutory cross-reference to the federal Title IX, which prohibits discrimination on the basis of sex in education programs that receive federal financial assistance.[2]

In 2020, the Supreme Court held in *Bostock v. Clayton County*[3] that "discrimination on the basis of sex" under the federal Title VII, which prohibits discrimination in the workplace on the basis of race, color, religion, sex, or national origin, extends to discrimination on the basis of sexual orientation and gender identity.[4] As Justice Gorsuch explained:

> [I]t is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex. Consider, for example, an employer with two employees, both of whom are attracted to men. The two individuals are, to the employer's mind, materially identical in all respects, except that one is a man and the other a woman. If the employer fires the male employee for no other reason than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague. Put differently, the employer intentionally singles out an employee to fire based in part on the employee's sex, and the affected employee's sex is a but-for cause of the discharge. Or take an employer who fires a transgender person who was identified as a male at birth but who now identifies as a female. If the employer retains an otherwise identical employee who was identified as female at birth, the employer intentionally penalizes a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth. Again, the individual employee's sex plays an unmistakable and impermissible role in the [employer's] decision.[5]

In 2021, in light of *Bostock*'s interpretation of the scope of "discrimination on the basis of sex," the Department of Health and Human Services (HHS) announced that it "would interpret Section 1557's prohibition on sex discrimination to include (1) discrimination on the basis of sexual orientation and (2) discrimination on the basis of gender identity."[6] HHS subsequently issued proposed amendments to the guidance for implementing Section 1557 in 2022, and issued the final rule in 2024.[7] Several federal

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[1] 42 U.S.C. § 18116.
[2] *See ibid.*; 20 U.S.C. § 1681.
[3] *Bostock v. Clayton County* (2020) 590 U.S. 644.
[4] *Id.* at pp. 659-660.
[5] *Id.* at p. 660.
[6] 87 Fed. Reg. 47824-01 (Aug. 4 2022) p. 47827.
[7] 89 Fed. Reg. 37522-01 (May 6, 2024) p. 37523.

district court judges issued nationwide injunctions to prevent HHS's interpretation of Section 1557 and the final rule from taking effect.[8]

As it stands, there is no definitive federal court ruling on whether the rationale of *Bostock* applies to Section 1557. The Ninth Circuit has, however, held that *Bostock*'s rationale applies in claims for discrimination on the basis of gender identity under Title IX, suggesting it would do the same in a Section 1557 challenge.[9]

3. Executive Order 14187 attacks Section 1557 and transgender youth

On January 28, 2025, President Trump signed Executive Order 14187, which assailed the availability of gender-affirming care for "children."[10] The Executive Order defined "children" to include actual children as well as adults under the age of 19 years.[11] Among other things, Executive Order 14187 directed the Secretary of HHS to end gender-affirming care for children and 18-year-olds under Section 1557 and to withdraw the Biden Administration's guidance extending Section 1557 to discrimination on the basis of sexual orientation and gender identity.[12] Executive Order 14187 followed on the heels of Executive Order 14168, signed by President Trump on the first day of his presidency, which attempts to order transgender and nonbinary persons out of existence.[13]

Medical research indicates that transgender children and 18-year-old adults benefit from the medical care that Executive Order 14187 would deny them. To wit, multiple studies demonstrate that transgender youth have better mental health outcomes when they receive gender-affirming care[14]—which is why medical professionals keep prescribing them. And despite the supposed "countless" children undergoing gender-affirming care,[15] the actual rates of these treatments are quite low. Between 2018 and 2022, puberty blockers were prescribed to minors at a rate of 20.81 per 100,000 minors

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[8] *E.g.*, *Texas v. Becerra* (E.D. Tex., Aug. 30, 2024) Case No. 2024 WL 4490621; *Texas v. EEOC* (N.D. Tex. 2022) 633 F.Supp.3d 824; *Tennessee v. Becerra* (S.D. Miss. 2024) 739 F.Supp.3d 467.
[9] *See Hecox v. Little* (9th Cir. 2024) 104 F.4th 1061, 1079-1080.
[10] Exec. Order No. 14187, 90 Fed. Reg. 8771 (Jan. 28, 2025).
[11] *Ibid.*
[12] *Ibid.*
[13] Exec. Order No. 14168, 90 Fed. Reg. 8615 (Jan. 20, 2025).
[14] *E.g.*, Tordoff, et al., *Mental Health Outcomes in Transgender and Nonbinary Youths Receiving Gender-Affirming Care* (Feb. 25, 2022) JAMA Network Open, p. 7 (transgender and nonbinary youths receiving puberty blockers or hormone therapy "was associated with 60% lower odds of moderate to severe depression symptoms and 73% lower odds of self-harm or suicidal thoughts"); Chen, et al., *Psychosocial Characteristics of Transgender Youth Seeking Gender-Affirming Medical Treatment: Baseline Findings From the Trans Youth Care Study* (Jun. 2021) Journal of Adolescent Health, Vol. 68, No. 6, pp. Kuper, et al., *Body Dissatisfaction and Mental Health Outcomes of Youth on Gender-Affirming Hormone Therapy* (Mar. 2020) Pediatrics, pp. 5, 7; Allen, et al., *Well-Being and Suicidality Among Transgender Youth After Gender-Affirming Hormones* (Sept. 2019) Clinical Practice in Pediatric Psychology, Vol. 7, No. 3, pp. 304-307.
[15] Exec. Order No. 14187, *supra*..

assigned female at birth, and 15.22 per 100,000 minors assigned male at birth.[16] Hormone therapy was prescribed to minors at a rate of 49.9 per 100,000 minors assigned female at birth, and 25.34 per 100,000 minors assigned male at birth; in no case was a minor below 12 years of age prescribed hormones, with most prescriptions being written for older teens.[17] A grand total of 108 transgender and nonbinary adolescents received gender-affirming surgery between 2018 and 2021.[18]

Executive Order 14187 also facially discriminates against transgender youth and 18-year-olds, denying them treatments that are still available to cisgender individuals. Puberty blockers, for example, were approved by the United States Food and Drug Administration (FDA) in 1993 for treating children one year of age and older with "precocious puberty."[19] Puberty blockers are designed, and approved, to suppress children's pituitary-gonadal systems, thereby preventing them from going through puberty and displaying secondary sexual characteristics.[20] The effects are reversible, usually within six months of discontinuing puberty blockers.[21] Under Executive Order 14187, cisgender children can continue taking puberty blockers, but transgender children cannot.

The same goes for breast reduction surgery. Although it's rare, minors do sometimes receive breast reduction surgery.[22] But these surgeries are overwhelmingly performed on cisgender male minors— for example, in 2019, 97 percent of breast reduction surgeries performed on minors were performed on cisgender males.[23] Executive Order 14187 blocks the 3 percent of surgeries performed on transgender minors while leaving the 97 percent unbothered.

The opposition mentions, but does not cite, a study of 107,000 transgender adults who have received gender-affirming surgery. In fact, that study[24] expressly noted that, because the study was disaggregated and based on treatment notes, it was unable to establish causation between gender-affirming surgery and subsequent mental health

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[16] Hughes, et al., *Gender-Affirming Medications Among Transgender Adolescents in the US, 2018-2022*(March 2025) JAMA Pediatrics Vol. 179, No. 3, p. 343.
[17] *Ibid.*
[18] Hassan, et al., *Temporal Trends in Gender Affirmation Surgery Among Transgender and Non-Binary Minors* (Sept. 25, 2023) Cureus, *available at* https://pmc.ncbi.nlm.nih.gov/articles/PMC10599689/. All links in this analysis are current as of April 17, 2025.
[19] *E.g.*, FDA, Lupron Depot-Ped Kit, NDA No. 020263 (Rev. Apr. 2023).
[20] FDA, Lupron Depot-Ped Kit, NDA No. 020263 (Rev. May 2017).
[21] *Ibid.*
[22] Dai, et al., *Prevalence of Gender-Affirming Surgical Procedures Among Minors and Adults in the US*, JAMA Open (Jun. 27, 2024), *available at* https://pmc.ncbi.nlm.nih.gov/articles/PMC11211955/.
[23] *Ibid.* Some researchers argue that cosmetic surgeries and procedures that are intended to align a cisgender person's appearance with their ideal gender phenotype—breast augmentation or reduction, nose jobs, etc.---should also be referred to as gender-affirming care, to acknowledge that gender-affirming procedures are not unique to transgender and nonbinary individuals. (*Ibid.*)
[24] Lewis, et al., *Examining gender-specific mental health risks after gender-affirming surgery: a national database study* (2025) The Journal of Sexual Medicine, pp. 1-7.

conditions.[25] The authors also posited that, in some cases, transgender individuals' mental health symptoms would have been subsumed into their gender dysphoria diagnosis prior to surgery, while "[f]ollowing gender-affirming surgery, the alleviation of distress related to gender incongruence may enable the reclassification of these symptoms as independent diagnoses."[26] Finally, the authors' conclusion is not, as the opponents seek, that gender-affirming care (for children or adults) should be limited, but rather that their findings "underscore the necessity for ongoing mental health support for transgender individuals during their post-surgery trajectories" and "highlight the critical need for gender-specific care tailored to the unique experiences of male and female populations."[27]]

4. Executive Order 14187 has been stayed in part, but portions of the order attacking Section 1557 and restricting gender-affirming care remain in effect

Portions of Executive Orders 14187 and 14168 have been enjoined on a nationwide basis.[28] The Office of Management and Budget has also been enjoined from executing any funding freezes pursuant to those Executive Orders.[29] In enjoining parts of Executive Order 14187 and the broader anti-trans order, Executive Order 14168, Judge Brendan A. Hurson noted that the orders do not cite any medical evidence or research indicating that gender-affirming care is harmful to minors or 18-year-olds, and that the Administration's citation of studies in the injunction action were "merely [an] attempt to prop up the bare conclusions made by the [Executive Orders] with *post hoc* rationalizations and justifications that are nowhere to be found in the Orders' text."[30] Judge Hurson then went on to rule that, even if the Executive Order had rested on the Administration's cited studies, they still would be insufficient to justify "the immediate cessation of gender-affirming care for those under nineteen and the purported goal of protecting children" or to "justify the disparate treatment of transgender youth as a means of protecting them."[31]

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[25] *Id.* at p. 5.
[26] *Ibid.*
[27] *Id.* at p. 6.
[28] *E.g.*, *PFLAG v. Trump* (D.Md., Mar. 4, 2025) —F.Supp.3d —, 2025 WL 685124; *see also Washington v. Trump* (W.D. Wash., Feb. 16, 2025) —F.Supp.3d—, 2025 WL 509617 (enjoining Executive Order 14187's withholding of federal funds from providers unless they stop providing gender-affirming care in Washington, Oregon, and Minnesota). Funnily enough, since the beginning of the year, Republicans in the Senate have become extremely concerned about the practice of federal district court judges issuing nationwide injunctions, to the point that Senator Chuck Grassley has introduced legislation to prohibit the practice. (*See* Sen. No. 1206, 119th Cong, 1st Sess. (2025).)
[29] *New York v. Trump* (D.R.I., Mar. 6, 2025) —F.Supp.3d—, 2025 WL 715621; *see also Doe v. McHenry* (D.D.C., Feb. 4, 2025) —F.Supp.3d—, 2025 WL 388218 (enjoining Executive Order 14168 insofar as it requires transgender federal prisoners to be relocated to penitentiaries inconsistent with their gender identities and denying them gender-affirming care).
[30] *PFLAG, Inc.*, *supra*, at p. 26.
[31] *Id.* at p. 27 (cleaned up).

Committee staff are not aware of any injunction addressing Executive Order 14187 to the extent it purports to limit Section 1557's antidiscrimination provision. HHS rescinded the Biden Administration's guidance on Section 1557's prohibition of discrimination on the basis of sexual orientation and gender identity on February 20, 2025.[32] HHS has also issued a proposed rule that would prohibit gender-affirming care from being covered as an essential health benefit by health insurers.[33] Section 1557 is, of course, still in place, because a president cannot override an act of Congress with an executive order.[34] Nevertheless, stakeholders report that Executive Order 14187 has affected, or may affect, care for a wide range of communities:

- California Latinas for Reproductive Justice report that the loss of federal grant money under Section 1557 puts multiple vulnerable communities at risk, including LGBTQ individuals, non-English-speaking individuals, and women seeking abortion care services.
- The Alliance for Children's Rights notes that "[o]ne in three Black Californians (32%) reported being treated unfairly while seeking medical care," and that "[m]ost Black Californians report putting a great deal or quite a bit of effort into getting appropriate screenings or preventive care (77%)"; these inequities "result in delayed care, unmet medical needs, and poorer overall health outcomes." The Alliance urges support for this bill to ensure that antidiscrimination protections remain in place even if the federal government declines to enforce Section 1557's requirements.
- Asian Resources, Inc., notes that, on top of Executive Order 14187, HHS has cut over 10,000 staff members, in particular from offices that addressed health disparities and supported minority health initiatives. With the loss of these offices, the likelihood of discrimination in health care—be it intentional or the result of unconscious bias—is likely to increase.

5. <u>This bill codifies in state law Section 1557's prohibitions on discrimination by health care service plans and health insurers on the basis of race, color, national origin, age, disability, or sex</u>

This bill codifies in state law the protections of Section 1557, consistent with the Supreme Court and Ninth Circuit Court of Appeals' interpretation of *Bostock*. Specifically, this bill prevents a health care service plan or health insurer from excluding a person from enrollment or participation in, or denying them benefits under, the health care service or insurance plan, or otherwise discriminating against them, on the basis of

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[32] HHS, Office of the Secretary, *Letter re: Rescission of "HHS Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy" (issued March 2, 2022)* (Feb. 20, 2025).
[33] HHS, Proposed Rule, Patient Protection and Affordable Care Act; Marketplace Integrity and Affordability, 90 Fed. Reg. 12942-01 (Mar. 19, 2025).
[34] U.S. Const., art. I, §§ 1, 7 cl. 2; *see, e.g., Youngstown Sheet & Tube Co. v. Sawyer* (1952) 343 U.S. 578, 587-588; *see also id.* at pp. 637-638 (conc. opn. of Jackson, J.) ("When the President takes measures incompatible with the express or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter").

race, color, national origin, age, disability, or sex. Consistent with *Bostock*, the bill defines "discrimination on the basis of sex" to include discrimination on the basis of sex characteristics, including intersex traits; pregnancy or related conditions, sexual orientation; gender identity; and sex stereotypes.

SB 418 does not intrude into the relationship between a patient and their medical professional: the bill in no way affects a medical professional's ability to recommend, or decline to recommend, any treatment or service. The bill is also clear that access or coverage is not required for a treatment or service when there is a legitimate, non-discriminatory reason to deny it, or for which is clinically inappropriate for the patient. Accordingly, this bill preserves medical professionals' ability to prescribe treatments and services which they, in their medical judgment, deem proper, while prohibiting certain classes of people from being denied coverage for medically prescribed treatment on the basis of invidious discrimination.

The bill also requires a health care service plan or health insurer to provide to enrollees specified information, including a statement that the plan or insurer does not discriminate on the basis of sex and the contact information for the plan or insurer's grievance procedure. The author has agreed to amend the bill to clarify that recipients and enrollees should be given information about all types of prohibited information; the amendments are set forth below in Part 6.

This bill's protections are cumulative of, and consistent with, California's existing antidiscrimination provisions, including laws preventing discrimination on the basis of the same list (or an even broader list) of characteristics in services and accommodations in business establishments,[35] employment,[36] housing,[37] and education. And to be clear, this bill does more than protect transgender minors and 18-year-old adults; the bill also protects against other attacks on the availability of care that may arise if Section 1557 is repealed. The author has agreed to amendments to further clarify that the bill's protections are in addition to, not in lieu of, existing state protections.

While opponents of the bill argue that this bill will create tension with federal law, there is no current conflict. As noted above, Section 1557 is still the law of the land, and Executive Order 14187 does not purport to repeal it (nor could it). HHS has repealed the Biden Administration's rules surrounding Section 1557, but no new rules have been put into place, so there is no present conflict with any federal regulations. Moreover, to the extent the new HHS attempts to promulgate regulations that are contradictory to the plain language of Section 1557, *Bostock*, or the general principles of equal protection, it is unclear whether those regulations would be able to take effect. As a result, the risk of preemption is, at this stage, speculative.

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[35] Civ. Code, § 51.
[36] Gov. Code, § 12940.
[37] *Id.*, § 12955.

6. Amendments

As noted above, the author has agreed to amend the bill to (1) ensure that the notice provided to policyholders and enrollees addresses all types of prohibited discrimination, and (2) further clarify that the bill's protections do not disturb or override existing state antidiscrimination provisions. The amendments are as follows, subject to any nonsubstantive changes the Office of Legislative Counsel may make:

Amendment 1

At page 4, in line 40, delete "sex" and insert "any characteristic protected under applicable state law, including, but not limited to, Section 1367.0435"

Amendment 2

At page 5, in line 1, delete "sex-based"

Amendment 3

At page 5, in line 6, delete "sex-based"

Amendment 4

At page 5, between lines 10 and 11, insert:

> (f) The rights, remedies, and penalties established by this section are cumulative and shall not be construed to supersede the rights, remedies, or penalties established under other laws, including, but not limited to, Article 9.5 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, and Section 51 of the Civil Code, and any implementing regulations.

Amendment 5

At page 7, in line 18, delete "sex" and insert "any characteristic protected under applicable state law, including, but not limited to, Section 10133.135"

Amendment 6

At page 7, in line 19, delete "sex-based"

Amendment 7

At page 7, in line 23, delete "sex-based"

Amendment 8

At page 7, between lines 25 and 26, insert:

> (f) The rights, remedies, and penalties established by this section are cumulative and shall not be construed to supersede the rights, remedies, or penalties established under other laws, including, but not limited to, Article 9.5 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, and Section 51 of the Civil Code, and any implementing regulations.

7. Arguments in support

According to Clínica Monseñor Oscar A. Romero:

> Executive Order 14187 directed the Secretary of Health and Human Services to review the legality of Section 1557 of the ACA. This section makes it unlawful for any health care provider who receives funding from the federal government to refuse to treat an individual—or to otherwise discriminate against the individual—based on race, color, national origin, sex, age or disability. Since then, all information on Section 1557 has been removed from federal government websites…
>
> This rule is crucial in supporting multiple vulnerable communities from discrimination including LGBTQ+ (especially transgender individuals), non-English speaking individuals, and women seeking abortion care services, along with many others who have historically struggled to access medical care.
>
> Clínica Monseñor Oscar A. Romero (Clínica Romero) is a 501 (c) (3) nonprofit Federally Qualified Health Center providing comprehensive healthcare services in the Pico-Union and Boyle Heights neighborhoods of Los Angeles County. Today, 42 years after its inception, Clinica Romero continues to uphold its mission to provide quality, affordable, and culturally sensitive health care and other services to the uninsured, insured, and underserved communities of greater Los Angeles regardless of ability to pay by upholding the legacy and tradition of Monsenor Oscar Romero. We provide services at six clinic sites within the neighborhoods of Pico-Union and Boyle Heights- some of the most densely populated and impoverished areas of the city.
>
> Committed to health equity, we prioritize low-income, minority, homeless, immigrant, and refugee communities in Central L.A. and the Valley. Our patients often face systemic barriers to care, and we remain steadfast in ensuring access for all. We strongly support SB 418 and appreciate your leadership in advancing healthcare equity.

8. Arguments in opposition

According to the California Catholic Conference:

> No insurer or plan sponsor should be required as a condition of participating in the market for health plans, to violate the very religious and moral convictions that prompt them to offer those benefits in the first place. Catholic employers forced to provide insurance coverage that finances the destruction of healthy organs and body systems would violate established human rights norms, and the Christian virtues of charity, integrity, and justice.
>
> The Trump administration already struck down the HHS Rule 1557. Passing this bill will place service providers in a paradox, either requiring that they follow state law to cover gender transition procedures and thus face federal challenges, or suffer financial losses from defense against lawsuits from violation of state law. This catch-22 may force more service providers to go out of business or shut down their services.

SUPPORT

Women's Foundation California, Solis Policy Institute (sponsor)
Alliance for Children's Rights
API Equality-LA
APLA Health
Asian Resources, Inc.
Bienestar Human Services
California Advocates for Nursing Home Reform
California Chapter of the American College of Emergency Physicians
California Dental Association
California Immigrant Policy Center
California Latinas for Reproductive Justice
California Legislative LGBTQ Caucus
California LGBTQ Health and Human Services Network
California Pan-Ethnic Health Network
California School-Based Health Alliance
Center for Community Action and Environmental Justice
Clínica Monseñor Oscar A. Romero
Community Clinic Association of Los Angeles County
Courage California
East Bay Community Law Center
El/La Para TransLatinas
Equality California
Essential Access Health
Gender Justice LA

interACT Advocates for Intersex Youth
LGBTQ+ Inclusivity, Visibility, and Empowerment
Los Angeles LGBT Center
Mental Health America of California
Mixteco/Indígena Community Organizing Project
National Health Law Program
Orange County Equality Coalition
PFLAG Los Angeles
Santa Monica Democratic Club
South Asian Network
Southeast Asia Resource Action Center
The Children's Partnership
The Los Angeles Trust for Children's Health
The San Diego LGBT Community Center
The Trevor Project
Trans Beyond Bars
TransLatin@ Coalition
Viet Rainbow of Orange County
Western Center on Law and Poverty
Five individuals

OPPOSITION

California Catholic Conference

RELATED LEGISLATION

Pending legislation: SB 257 (Wahab, 2025) makes pregnancy a triggering event for purposes of enrollment or changing a health benefit plan and prohibits a health care service plan contract or disability insurance policy issued, amended, or renewed on or after January 1, 2026, that provides coverage for maternity services or newborn and pediatric care services from taking specified actions based on the circumstances of conception. SB 257 is pending before the Senate Health Committee.

Prior legislation: AB 1502 (Schiavo, 2023) would have prohibited a health care service plan or health insurer from discriminating on the basis of race, color, national origin, sex, age, or disability through the use of clinical algorithms in its decisionmaking. AB 1502 died in the Assembly Health Committee.

PRIOR VOTES:

Senate Health Committee (Ayes 9, Noes 0)

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