

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1421 Gender Clinical Interventions

SPONSOR(S): Health & Human Services Committee, Healthcare Regulation Subcommittee, Fine and others

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthcare Regulation Subcommittee	12 Y, 5 N, As CS	McElroy	McElroy
2) Health & Human Services Committee	15 Y, 6 N, As CS	McElroy	Calamas

SUMMARY ANALYSIS

Gender dysphoria is a behavioral health disorder diagnosable by a health care practitioner. The American Psychiatric Association's Diagnostic Statistical Manual of Mental Disorders (DSM) classification of gender dysphoria denote a "marked incongruence between one's experienced/expressed gender and assigned gender, of at least six months' duration" and manifestation of sub-criteria that differs based on age. Little is known about the cause of gender dysphoria and the marked increase in minors seeking treatment. Approximately 80% of prepubertal children diagnosed with gender dysphoria do not remain gender dysphoric or gender incongruent after puberty, but there is no method to distinguish those for whom gender identity issues may persist into adulthood.

CS/CS/HB 1421 regulates gender clinical interventions provided or performed for the purpose of affirming a person's perceived gender, including surgical and hormonal therapies and treatments. The bill prohibits health care practitioners from providing gender clinical interventions to minors, with exceptions. The bill prohibits all healthcare practitioners, except Florida-licensed physicians or a physician employed by the Federal Government, from providing gender clinical interventions to adults. A physician must obtain written informed consent on a form adopted by the Board of Medicine or Board of Osteopathic Medicine, as applicable, each time the physician provides gender clinical interventions.

The bill requires the Department of Health (DOH), or the applicable board, to revoke the license of a physician who violates any of the preceding requirements and imposes criminal penalties for certain violations. The bill also provides conscience protection for practitioners or other employees who refuse to participate in providing gender clinical interventions, prohibiting licensure discipline and any other type of recriminatory action against them.

The bill creates a civil cause of action for injuries and wrongful death caused by gender clinical interventions.

The bill prohibits the use of funds by a government entity for gender clinical interventions and prohibits insurance companies from providing coverage for such treatments.

The bill prohibits DOH from changing sex on birth certificates for gender identity changes, with exceptions. The bill establishes requirements for a health care practitioner to request a change to a birth certificate and expressly prohibits changes based upon a person's perception of gender. A health care practitioner who makes a misrepresentation or provides fraudulent evidence in such a request is subject to licensure discipline.

The bill also authorizes a court to modify or stay a child custody determination to protect a child from being subjected to gender clinical interventions in another state.

The bill has no fiscal impact on state or local government.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Gender Dysphoria

Transgender and gender nonconforming are general terms for individuals whose gender identity, role, or expression differ from their biological sex at birth.¹ Gender dysphoria refers to the significant discomfort or distress felt as a result of the gender incongruity.²

Diagnosis and Prevalence

Gender dysphoria is a behavioral health disorder diagnosable by a health care practitioner. The American Psychiatric Association's Diagnostic Statistical Manual of Mental Disorders (DSM) classification of gender dysphoria denote a "marked incongruence between one's experienced/expressed gender and assigned³ gender, of at least six months' duration" and manifestation of sub-criteria that differs based on age.⁴

Gender Dysphoria Diagnostic Criteria
<p>For all age groups, diagnosis requires both of the following:</p> <ul style="list-style-type: none">• Marked incongruity between birth sex and felt gender identity, present for at least six months' duration.• Clinically significant distress or impairment in social, school, occupational, or other important areas of functioning.
<p>For children (under age 13), diagnosis requires at least six of the following:</p> <ul style="list-style-type: none">• A strong desire to be or insistence that they are another gender.• A strong preference for dressing in clothing typical of the opposite gender, and in girls, resistance to wearing typically feminine clothing.• A strong preference for cross-gender roles when playing.• A strong preference for toys, games, and activities typical of another gender.• A strong preference for playmates of another gender.• A strong rejection of toys, games, and activities typical of the gender that matches their birth sex.• A strong dislike of their anatomy.• A strong desire for the primary and/or secondary sex characteristics that match their felt gender identity.
<p>For adolescents (over age 13) and adults, diagnosis requires at least two of the following:</p> <ul style="list-style-type: none">• A strong desire to be rid of (or for young adolescents, prevent the development of) their primary and/or secondary sex characteristics.• A strong desire for the primary and/or secondary sex characteristics that match their felt gender.• A strong desire to be another gender.• A strong desire to be treated like a different gender.• A strong belief that they have the typical feelings and reactions of a different gender.

¹ Coleman, E., Radix, A.E., Bouman, W.P., Brown, G.R., de Vries, A.L.C., et al, (2022), Standards of Care for the Health of Transgender and Gender Diverse People, Version 8, *International Journal of Transgender Health*, 23(S1), S1-S260.

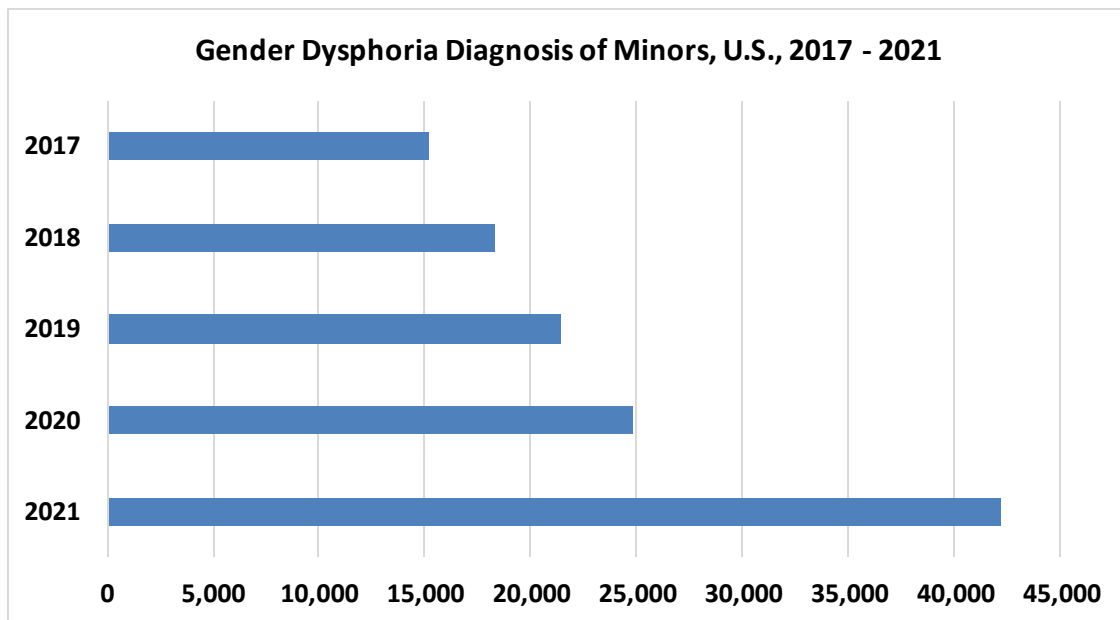
² *Id.*

³ The DSM uses "assigned" to refer to the delivery physician's assessment and notation of the child's biological sex, usually based on external genitalia. See, American Psychiatric Association, Gender Dysphoria, available at, <https://www.psychiatry.org/patients-families/gender-dysphoria> (last viewed March 18, 2023).

⁴ American Psychiatric Association, (2013), Diagnostic and Statistical Manual of Mental Disorders (5th ed.), Arlington, VA: American Psychiatric Publishing.

The number of minors diagnosed with gender dysphoria significantly increased the last five years.⁵ Previously, the majority of individuals diagnosed with gender dysphoria were males but recently there has been an increase in diagnosis for females.⁶

The graph below shows the increase of gender dysphoria diagnosis of minors over the last five years. This number only includes those whose physicians specify a gender dysphoria diagnosis and whose treatment was covered by insurance; therefore, the numbers are likely much higher.⁷



Little is known about the cause of gender dysphoria and the marked increase in minors seeking treatment.⁸ There is currently no method to distinguish those for whom gender identity issues may persist into adulthood. Approximately 80% of prepubertal children diagnosed with gender dysphoria do not remain gender dysphoric or gender incongruent after puberty.⁹ One research review indicated that 61%-98% of children desist by adulthood.¹⁰ These data point to a risk for misdiagnosis.

Comorbidity and Gender Dysphoria Diagnosis

Symptoms of gender dysphoria rarely exist in isolation and are commonly exacerbated by psychosocial stressors and psychiatric disorders.¹¹ Studies consistently show that individuals referred to treatment for gender dysphoria have high rates – up to 50% – of behavioral and mental health issues compared to their non-transgender peers.¹² Many minors seek treatment for psychiatric issues prior to having

⁵ Respaat, R. and Terhune, C., *Putting numbers on the rise in children seeking gender care*, Reuters Investigates, <https://www.reuters.com/investigates/special-report/usa-transyouth-data/> (last accessed Feb. 6, 2023).

⁶ Steensma TD, Cohen-Kettenis PT, Zucker KJ, (2018), Evidence for a change in the sex ratio of children referred for gender dysphoria: data from the Center of Expertise on Gender Dysphoria in Amsterdam (1988-2016), *J. Sex & Marital Therapy* 44(7): 713-5; de Graf NM, Carmichael P, Steensma TD, Zucker KJ, (2018), Evidence for a change in the sex ratio of children referred for gender dysphoria: data from the gender identity development service in London (2000-2017), *J Sex Med* 15(10).

⁷ *Supra* note 5.

⁸ Cass, H., *The Cass Review, Independent review of gender identity services for children and young people: interim report*, Feb 2022.

⁹ Streensma, T, Biemond, R, de Boer, F., Cohen Kettenis, P., (2011), Desisting and persisting gender dysphoria after childhood: a qualitative follow-up study, *Clinical Child Psychology and Psychiatry*, 16(4):499-516.

¹⁰ Laidlaw, M., Van Meter, Q., Hruz P., Van Mol, A., Malone, W., (2019), Letter to the editor: "endocrine treatment of gender-dysphoric/gender incongruent persons: an endocrine society clinical practice guideline", *J Clin Endocrinol Metab*, 104(3):686–687.

¹¹ Vrouenraets et al., 2015.

¹² Frew, T., Watsford, C., and Walker, I., (2021), Gender dysphoria and psychiatric comorbidities in childhood: a systematic review, *Australian Journal of Psychology*, 73:3, 255-271; Meybodi, A.M., Hajebi, A., and Jolfaei, A.G., (2014), Psychiatric Axis I Comorbidities Among Patients with Gender Dysphoria, *Psychiatry Journal*, vol. 2014, Article ID 971814. See also, Russell D., Hoq, M., Coghill, D., Pang, K., *Prevalence of Mental Health Problems in Transgender Children Aged 9 to 10 Years in the US, 2018*, *JAMA* July 22, 2022. doi:10.1001/jamanetworkopen.2022.23389, noting that "by 9 to 10 years of age transgender children already show increased susceptibility to mental health problems compared with their cisgender peers", and calling for more research on the matter.

gender identity issues. In a study of minors seeking medical treatment for gender dysphoria, 68% had their first contact with psychiatric services due to reasons other than gender dysphoria.¹³ Mental health conditions commonly comorbid with gender dysphoria include¹⁴:

- Anxiety¹⁵
- Depression¹⁶
- Eating disorders¹⁷
- Suicidality¹⁸
- Self-harm¹⁹

Autism spectrum disorder, a developmental and neurological disorder, is also a common comorbidity.²⁰

Adults with gender dysphoria have high rates of childhood trauma compared to non-transgender individuals. When comparing attachment and complex trauma in gender dysphoric adults, 56% of such adults experienced four or more forms of childhood trauma compared to 7% in non-transgender peers.²¹ These childhood traumas include:²²

- Neglect
- Rejection
- Role reversal
- Psychological abuse
- Physical abuse
- Sexual abuse
- Domestic violence
- Separations

Experts have opined that unaddressed psychiatric issues and unaddressed childhood trauma could lead to misdiagnosis of gender dysphoria and inappropriate gender transition.²³

Treatment for Gender Dysphoria

¹³ Riittakerthu, K-H., Sumia, M., Tyolajarvi, M., & Lindberg, N., (2015), Two years of gender identity services for minors: overrepresentation of natal girls with severe problems in adolescent development, *Child and Adolescent Psychiatry and Mental Health*, 9:9.

¹⁴ See, also, Barr, S., Roberts, D., & Thakkar, K. (2021), Psychosis in transgender and gender non-conforming individuals: A review of the literature and a call for more research, *Psychiatry Research*, 306:114272. The authors reviewed 10 studies of psychosis prevalence in transgender individuals, and noted that the higher prevalence may be due to diagnostic bias; that unique factors specific to transgender identity and individual history (such as discrimination and oppression, childhood trauma, lack of gender affirmation, lack of culturally-competent mental health care, and substance abuse) might explain higher prevalence; and that this area should be researched further.

¹⁵ Hold, V., Skagerberg, E., and Dunsford, M., Young people with features of gender dysphoria: Demographics and associated difficulties, *Clin Child Psychol Psychiatry* (2014).

¹⁶ *Id.*

¹⁷ Pham, A., Eadeh, H., Garrison, M., & Ahrens, K., A Longitudinal Study on Disordered Eating in Transgender and Nonbinary Adolescents, (2022).

¹⁸ Reisner, S., et al, (2015), Mental health youth in care at an adolescent urban community health center: A matched retrospective cohort study, *J Adolesc Health*, 56(3): 274-279.

¹⁹ *Id.*

²⁰ See VanderLaan, D.P., et al, (2015), Do children with gender dysphoria have intense/obsessional interests? The Journal of Sex Research, 52(2), 213-219; Kallitsounaki, A., Williams, D.M., Autism Spectrum Disorder and Gender Dysphoria/Incongruence. A systematic Literature Review and Meta-Analysis, *J. Autism Dev Disord* (2022).

²¹ Giovanardi, G., Vitelli, R., Maggiora Vergano, C., Fortunato A., Chianura L., Lingiardi V., and Speranza AM., (2018), Attachment Patterns and Complex Trauma in a Sample of Adults Diagnosed with Gender Dysphoria, *Front. Psychol*, 9:60. The attachment and complex traumas experienced by those in the study varies among males and females.

²² *Id.*

²³ See *Supra* note 1. See also Littman, L., (2021), Individuals Treated for Gender Dysphoria with Medical and/or Surgical Transition Who Subsequently Detransitioned; A Survey of 100 Detransitioners, *Arch Sex Behav*, 50, 3353-3369.

Treatment of minors with gender dysphoria has evolved. Traditionally, gender identity issues were treated as a mental illness, with treatment primarily provided through psychotherapy to help patients become comfortable with their sex at birth.²⁴

In the late 1990's, treatment began shifting to an "affirmative care model" after physicians in the Netherlands published a report on positive psychological outcomes for a transgender adolescent treated with hormones.²⁵ Those physicians suppressed puberty in the early stages followed by cross-sex hormone therapy starting at age 16. This treatment model became known as the "Dutch Protocol".

The "Dutch Protocol", as well as the re-categorization of gender identity issues in the DSM, created a profound shift in the medically accepted treatment for gender issues. In 2013, the authors of the DSM replaced the term "gender identity disorder" with "gender dysphoria in children" and "gender dysphoria in adolescence and adults" to diagnose and treat the distress individuals felt by the incongruity between their gender identities and their bodies.²⁶ The medical community stopped classifying gender identity issues as a mental illness. The "Dutch Protocol" was subsequently incorporated into the widely adopted standards of care for the treatment of transgender patients.²⁷

The treatment goal now focuses on affirming the patient's gender identity rather than affirming the gender of the patient's sex at birth. Treatment for gender dysphoria now primarily addresses the incongruity with psychotherapy and medical interventions that align the body with the mind, rather than the mind with the body. This treatment may include:²⁸

- Psychotherapy to address the negative impact of gender dysphoria and mental health, which includes social transitioning to affirm an individual's felt gender identity, role, and expression.
- Puberty blockers to suppress the release of testosterone or estrogen and stop the onset of secondary sex characteristics.
- Cross-sex hormone therapy to feminize or masculinize the body.
- Sex reassignment surgery to change primary and/or secondary sex characteristics (e.g., breasts/chest, external and/or internal genitalize, facial features, and body contouring).

Concerns with Treatment

Clinicians and academics have raised concerns with the appropriateness of medical interventions for minors based on the lack of rigorous scientific research on the issue. Various issues bring the value of gender treatment research into question; specifically: many lack randomized control trials, use small sample sizes, and have a medium to high risk of bias due to recruitment design.²⁹ From the perspective of some clinicians, there are no studies that sufficiently evaluate the long-term impact of medical treatments, so the long-term effects on physical developments, fertility, sexual function and brain development is unknown.³⁰

Limited research suggest access to puberty blockers and gender-affirming hormones may improve mental health outcomes, including reduced anxiety, depression, self-harm, and suicidality, in the short-term.³¹ On the other hand, other research found a higher rate of suicide attempts and suicide

²⁴ See Diagnostic and statistical manual of mental disorders. 3rd ed. Washington, DC: American Psychiatric Publishing; 1980; Diagnostic and statistical manual of mental disorders. 4th ed. Washington, DC: American Psychiatric Publishing; 1994.

²⁵ Cohen-Kettenis P.T., van Goozen S.H., (1998), Pubertal delay as an aid in diagnosis and treatment of a transsexual adolescent, *Eur Child Adolesc. Psychiatry*, 7(4):246-8.

²⁶ The American Psychiatric Association stated that "it is important to note that gender nonconformity is not itself a mental disorder". *Supra* note 4.

²⁷ *Supra* note 1; Hembree, W., Cohen-Kettenis, P., et al, (2017), Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline, *Journal of Clinical Endocrinology & Metabolism*, 102(11):2896-3903.

²⁸ *Supra* note 1.

²⁹ See Hruz, P., (2019), Deficiencies in Scientific Evidence for Medical Management of Gender Dysphoria, *The Linacre Quarterly* 87:1, 34-42.; Abbruzzese, E., Levine, S., Mason, J., (2023), The Myth of "Reliable Research" in Pediatric Gender Medicine: A critical evaluation of the Dutch Studies – and research that has followed, *Journal of Sex & Marital Therapy* DOI: 10.1080/0092623X.2022.2150346.

³⁰ *Supra* note 8.

³¹ See Allen, L. R., Watson, L. B., Egan, A. M., Moser, C. N., (2019), Well-being and suicidality among transgender youth after gender-affirming hormones, *Clinical Practice in Pediatric Psychology*, 7(3), 302.

completion in the short term, and much higher rates of suicide compared to the general population beginning 10 years post-transition.³²

Researchers are just beginning to understand the unintended physical effects of transgender treatment. Puberty is a time of complex chemical changes that direct the development of many bodily functions. Taking puberty blockers at that time can prevent that development, with the possibility of significant future harms as an adult. For example, recent studies document the effect of puberty-blocking medications on bone development, causing severe lack of density, which may be irreversible.³³ The long-term effect of puberty blockers and cross-sex hormone treatment on sexual function in adulthood requires further research. One literature review noted both positive and negative effects, but also noted that there is no valid tool to accurately measure sexual health outcomes.³⁴ Similarly, researchers are beginning to express concerns about the impact on the brain, including permanent alterations to neurodevelopment.³⁵

International Response to Concerns with Treatment

Health authorities in Finland, Sweden, and the United Kingdom have moved away from the “Dutch Protocol” by prioritizing psychological treatment for minors and prohibiting the prescribing of puberty blockers and cross-sex hormone therapy except in very rare cases.

- Sweden’s National Board of Health and Welfare updated its health care guidelines for child and adolescents with gender dysphoria by prohibiting hormonal therapy treatment except for exceptional cases.³⁶
- The Finnish Health Authority issued guidance prioritizing psychotherapy, rather than hormonal therapy, as the first-line treatment option and restricting sex-reassignment surgery.³⁷
- The U.K. National Health Service is closing Tavistock Gender Identity Development Services, the main gender clinic in London, after an independent review documented problems with medical providers overlooking mental health issues and rushing children into life-altering treatment. The NHS is developing a new service model emphasizing involving multiple clinical disciplines (rather than only gender clinicians).³⁸

State Policies on Gender Dysphoria Treatment

³² Dhejne C., Lichtenstein, P., Boman M., Johansson A., Långström N., Landén, M., (2011), Long-term follow-up of transsexual persons undergoing sex reassignment surgery: cohort study in Sweden, *PLoS One*, vol. 6, issue 2.

³³ See, e.g., Joseph T, Ting J, Butler G. The effect of GnRH analogue treatment on bone mineral density in young adolescents with gender dysphoria: Findings from a large national cohort. *J Pediatr Endocrinol Metab*. 2019; 10: 1077– 1081; Lee J., et al. (2020), Low bone mineral density in early pubertal transgender/gender diverse youth: findings from the trans youth care study, *J Endocr Soc*. Sep 1; 4(9): bvaa065. In 2022, the Endocrine Society took the position that more research is needed in this area to properly address bone health in young patients. Endocrine Society, “Longer treatment with puberty-delaying medication in transgender youth leads to lower bone mineral density”, June 12, 2022, available at <https://admin.endocrine.org/news-and-advocacy/news-room/2022/longer-treatment-with-puberty-delaying-medication-leads-to-lower-bone-mineral-density> (last viewed March 19, 2023).

³⁴ Mattawanon N., Charoenkwan K., Tangpricha V., (2021), Sexual dysfunction in transgender people: a systematic review, *Urol Clin N Am* 48 (2021) 437–460. See, Shirazi TN, Self H, Dawood K, et al., Pubertal timing predicts adult psychosexuality: Evidence from typically developing adults and adults with isolated GnRH deficiency, *Psychoneuroendocrinology*. 2020; 104733:104733;

³⁵ See, e.g.,

Chen D, Strang JF, Kolbeck VD, et al. Consensus parameter: Research methodologies to evaluate neurodevelopmental effects of pubertal suppression in transgender youth. *Transgend Health*. 2020; 4: 246– 257.

³⁶ Sweden’s National Board of Health and Welfare, *Updated knowledge support for care for gender dysphoria in young people* (Dec. 12, 2022) <https://www.socialstyrelsen.se/om-socialstyrelsen/pressrum/press/uppdaterat-kunskapsstod-for-vard-vid-konsdysfori-hos-unga/> (last visited Feb. 6, 2023).

³⁷ The Finnish Health Authority (PALKO/COHERE), *Medical treatment methods for dysphoria associated with variations in gender identity in minors – recommendation* (Jun. 16, 2020), https://palveluvalikoima.fi/documents/1237350/22895008/Alaik%C3%A4iset_suositus.pdf/c987a74c-dfac-d82f-2142-684f8ddead64/Alaik%C3%A4iset_suositus.pdf?t=1592317701000 (last visited Feb. 6, 2023).

³⁸ The National Health Service in England, *Interim service specification for specialist gender dysphoria services for children and young people* (Dec. 2022), <https://www.engage.england.nhs.uk/specialised-commissioning/gender-dysphoria-services/> (last visited Feb. 6, 2023).

Alabama, Arkansas, Arizona, and Utah have enacted laws that limit or restrict various treatment for gender dysphoria. Alabama³⁹ and Arkansas⁴⁰ prohibit puberty blockers, cross-sex hormone therapy, and surgical treatment for minors.⁴¹ Arizona will prohibit surgical treatment for minors when the law takes effect March 2023.⁴² Utah prohibits surgical treatment for minors and does not allow hormone treatment for minors unless diagnosed with gender dysphoria by specific professionals.⁴³

Texas has not enacted a law. However, the Governor of Texas issued an executive order requiring the state's child welfare agency to investigate any reported instance of a health care provider or parent who provides or seek puberty blockers, cross-sex hormone therapy, or sex reassignment treatment for minors.⁴⁴ State courts have granted an injunction blocking enforcement of the executive order against individual plaintiffs who have challenged it; otherwise, the executive order remains in effect.⁴⁵

Florida law does not currently regulate gender dysphoria treatment. However, the Florida Board of Medicine (BOM) and Board of Osteopathic Medicine (BOOM), and the Agency for Health Care Administration (AHCA) took administrative action to regulate it in 2022.

Department of Health – Practice of Medicine

The purpose of the Department of Health (DOH) is to protect and promote the health of all residents and visitors in Florida.⁴⁶ Under current law, the DOH must, among other things, provide or ensure the provision of quality health care and regulate health practitioners for the preservation of the health, safety, and welfare of the public.

Medical Boards

The Division of Medical Quality Assurance (MQA), within DOH, has general regulatory authority over health care practitioners.⁴⁷ MQA works in conjunction with 22 boards, including the BOM and the BOOM, and four councils to license and regulate seven types of health care facilities and more than 40 health care professions.⁴⁸ Each profession is regulated by an individual practice act and by Ch. 456, F.S., which provides general regulatory and licensure authority for MQA.

Board of Medicine

The BOM, within DOH, is composed of 15 members appointed by the Governor and confirmed by the Senate. The BOM has authority to adopt rules to implement the provisions of Ch. 458, F.S., including regulation and licensure of medical physicians and establishing standards of practice.

³⁹ Ala. Code Ann. §26-26(4)(a)1-3.

⁴⁰ Ark. Code Ann. §20-9-1502(a), (b).

⁴¹ Both laws are enjoined pending litigation. *Eknes-Tucker v. Marshall*, 603 F. Supp. 3d 1131 (M.D. Ala. 2022); *Brandt v. Rutledge*, 47 F. 4th 661 (8th Cir. 2022).

⁴² Ari. C. §32-3230. Arizona also excludes gender reassignment surgery from Medicaid coverage. Plaintiffs' challenged Arizona's Medicaid policy and sought a temporary injunction. The court denied holding that the surgery was not medically necessary. *Doe v. Snyder*, 28 F. 4th 103 (9th Cir. 2022).

⁴³ Utah Code Ann. §58-1-603 and §58-67-502. The law has not been challenged.

⁴⁴ The Attorney General of Texas issued an opinion finding that provision of puberty blockers, cross-sex hormone therapy, and sex reassignment surgery is child abuse as defined by Texas law. Tex. Op. Att'y. Gen. No. KP-0401 (Feb. 18, 2022). See also Letter from Greg Abbott, Governor of Texas, to Jaime Masters, Commissioner, Texas Department of Family and Protective Services (Feb. 22, 2022), <https://gov.texas.gov/uploads/files/press/O-MastersJaime202202221358.pdf>.

⁴⁵ *Doe, et al. v. Abbott, et al.*, case no. D-1-GN-22-000977. March 1, 2022. *Doe, et al. v. Abbott, et al.*, order reinstating preliminary injunction, March 21, 2022, Tex.App.Austin, 2022 WL 837956.

⁴⁶ S. 20.43, F.S.

⁴⁷ Pursuant to s. 456.001(4), F.S., health care practitioners are defined to include acupuncturists, physicians, physician assistants, chiropractors, podiatrists, naturopaths, dentists, dental hygienists, optometrists, nurses, nursing assistants, pharmacists, midwives, speech language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dieticians, athletic trainers, orthotists, prosthetists, electrologists, massage therapists, clinical laboratory personnel, medical physicists, dispensers of optical devices or hearing aids, physical therapists, psychologists, social workers, counselors, and psychotherapists, among others.

⁴⁸ Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2019-2020*, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/2019-2020-annual-report.pdf> (last visited March 19, 2023).

The BOOM, within DOH, is composed of seven members appointed by the Governor and confirmed by the Senate. The BOOM has the authority to adopt rules to implement the provisions of Ch. 459, F.S., including regulation and licensure of osteopathic physicians⁴⁹ and establishing standards of care.

Gender Dysphoria Treatment

In November, 2022, the BOM and the BOOM proposed rules that prohibit the prescribing of puberty blockers and cross-sex hormone therapy, and surgical procedures to minors seeking treatment for gender dysphoria.⁵⁰ The rules do not apply to the use of such treatments for purposes other than gender dysphoria (such as sexual development disorders like early onset puberty, etc.).

Both rules are prospective and allow minors being treated with puberty blockers or hormone therapies prior to the effective date of the rule to continue such treatment.

The Board of Medicine rule became effective March 16, 2023; the Board of Osteopathic Medicine rule will be effective March 28, 2023, barring rule challenges.

Agency for Health Care Administration – Medicaid Covered Services

Medicaid is a federal and state governments partnership established to provide coverage for health services for low-income or disabled people. The program is administered by AHCA and financed by federal and state funds.

Federal regulations require state Medicaid programs to cover all medically necessary services for children. However, federal rules do not require state Medicaid programs to cover services considered experimental or investigational. In 2022 the AHCA secretary requested the Florida Medicaid program formally determine whether the current treatment model for gender dysphoria is consistent with generally accepted professional medical standards and are not experimental or investigational.⁵¹

AHCA determined the current treatment model for gender dysphoria is not consistent with generally accepted professional medical standards, is experimental and investigational, and has the potential for harmful long-term effects.⁵² Following these findings, AHCA adopted a rule that prohibits Medicaid payments for gender dysphoria treatment.⁵³ The rule has been challenged in federal court but remains in effect.⁵⁴

Medically Verifiable Genetic Disorders

Disorders of sexual development⁵⁵ are congenital conditions where development of chromosomal,

⁴⁹ S. 459.003(3) defines the practice of osteopathic medicine means the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition, which practice is based in part upon educational standards and requirements which emphasize the importance of the musculoskeletal structure and manipulative therapy in the maintenance and restoration of health.

⁵⁰ Rules 64B8-9.019, 64B816-14.014, F.A.C.

⁵¹ Letter from Simone Marstiller, Secretary, Agency for Health Care Administration (Apr. 20, 2022), available at [Final Attachments.pdf \(myflorida.com\)](#) (last visited Feb. 1, 2023). States may exclude Medicaid payment for services that are unsafe or experimental.

Experimental treatment is not defined in the federal Medicaid statute or regulations. Therefore, a state may make its own determination of which treatment or services are experimental. See, Centers for Medicare and Medicaid Services, "EPSDT – a Guide for States: Coverage in the Medicaid Benefit for Children and Adolescents", June 2014, citing, Memorandum from S. Richardson to State Medicaid Directors (April 17, 1995), available at https://www.medicaid.gov/sites/default/files/2019-12/epsdt_coverage_guide.pdf, last viewed March 11, 2023.

⁵² Agency for Health Care Administration, Division of Medicaid, Generally Accepted Professional Medical Standards Determination on the Treatment of Gender Dysphoria (June 2022), available at https://www.ahca.myflorida.com/letkidsbekids/docs/AHCA_GAPMS_June_2022_Report.pdf, last viewed March 11, 2023.

⁵³ R. 59G-1.050, F.A.C.

⁵⁴ *Dekker et al. v. Marstiller*, case no. 4:2022cv00325, Sept. 7, 2022. Order Denying a Preliminary Injunction issues Oct. 24, 2022.

⁵⁵ Examples of disorders of sexual development include, but are not limited to, Klinefelter Syndrome, a genetic condition where males are born with an extra chromosome that can impact production of testosterone; Turner Syndrome, a genetic condition where females

gonadal, or anatomical sex is atypical.⁵⁶ Disorders of sexual development can be diagnosed at birth when sexual organs are ambiguous or later in life when hormones do not function appropriately.⁵⁷ Disorders of sexual development happen when there is:

- Abnormal number of sex chromosomes that impact how a body develops;
- A gene mutation that affects hormone production;
- A gene mutation that makes the body less able, or unable, to respond to hormones; or
- Exposure to external hormones during important phases of development.⁵⁸

Treatments for disorders of sexual development depend on the condition, but may include psychosocial support and genetic counseling, as well as medical interventions, such as hormonal therapies or surgery.⁵⁹ Hormonal therapies, such as puberty blockers and cross-sex hormones, and surgery used to treat these genetic disorders, are similar to the hormonal therapies and surgery used to treat the distress felt by gender dysphoria.

Effect of the Bill

Practice of Medicine

CS/CS/HB 1421 regulates the provision of gender clinical interventions provided or performed for the purpose of affirming a person's perceived gender, including surgical and hormonal therapies and treatments. Gender clinical interventions are sex reassignment surgeries and puberty blocking, hormone, and hormone antagonistic therapies. Treatment for a medically verifiable genetic disorder of sexual development or treatment of any infection, injury, disease, or disorder caused or exacerbated by the performance of gender clinical interventions are exempt from the prohibition on gender clinical interventions.

The bill prohibits health care practitioners from providing gender clinical interventions to minors. The bill provides an exception for a minor who was prescribed puberty blocking, hormone, and hormone antagonistic therapies on or before January 1, 2023, and continuously received such therapies through July 1, 2023. Any such minor may continue to receive such therapies through December 31, 2023, solely for the purpose of gradual discontinuation of these therapies.

The bill prohibits all health care practitioners, except for physicians licensed under chapter 458 or chapter 459 or a physician practicing medicine or osteopathic medicine in the employment of the Federal Government, from providing gender clinical interventions to adults. A physician must, while physically present in the same room as the patient, obtain written informed consent on a form adopted by the Board of Medicine (BOM) or Board of Osteopathic Medicine (BOOM), as applicable, each time the physician provides gender clinical interventions to a patient. The informed consent form must, at a minimum, include information related to the current state of research of:

- The long-term and short-term effects of gender clinical interventions.
- The impact of gender clinical interventions on physical and mental health.

The physician must sign the informed consent and maintain it in the patient's medical records. The bill requires the BOM and BOOM, as applicable, to adopt emergency rules to implement this section.

The bill requires DOH, or the applicable board, to revoke the license of a physician who violates any of the preceding requirements. DOH is required to enter an emergency order suspending the license of

have only one normal sex chromosome rather than two, impacting development of the ovaries and fertility; or Androgen Insensitivity Syndrome, a genetic condition where male genes cannot produce androgen receptors.

⁵⁶ *Supra* note 1. See also University of California, Department of Urology, Disorders of Sexual Differentiation, <https://urology.ucsf.edu/patient-care/children/genital-anomalies/disorders-of-sex-development>; National Health Service, Differences in Sex Development, <https://www.nhs.uk/conditions/differences-in-sex-development/> (last accessed Feb. 8, 2022).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

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any health care practitioner who willfully or actively provides gender clinical interventions to a minor. Under current law, DOH, or the boards, may suspend or revoke the license of any health care practitioner who violation of any statutory requirement.

In addition to disciplinary actions, the bill imposes criminal penalties for certain violations. A health care practitioner who willfully or actively provides gender clinical interventions to a minor commits a third-degree felony.

The bill provides conscience protection for practitioners or other employees who refuse to participate in providing gender clinical interventions, prohibiting licensure discipline and any other type of recriminatory action against them.

Funding by Governmental Entities

The bill prohibits the use of funds by a government entity for gender clinical interventions and prohibits insurance companies from providing coverage for such treatments. The bill extends the statute of limitations for claims by minors to 30 years and removes such claims from the requirements for a medical malpractice claim.

Insurance Coverage

In addition to the practitioner regulation, the bill addresses coverage of gender clinical intervention services. The bill prohibits health insurers and health maintenance organizations operating in Florida from providing coverage for such treatments.

Negligence Claims

The bill creates a civil cause of action for injuries and wrongful death caused by gender clinical interventions. A claimant can seek an injunction, attorney fees and costs and economic, noneconomic and punitive damages. The bill removes medical malpractice punitive damages limits for claims by an individual and allows treble damages by the estate for wrongful death claims. The bill extends the 2-year statute of limitation for medical malpractice claims to 30 years for claims related to gender clinical interventions. Wrongful death claims have a 5-year statute of limitations.

Child Custody

The bill authorizes a court to modify or stay a child custody determination to the extent necessary to protect a child from being subjected to gender clinical interventions in another state. The court must have jurisdiction over the matter and the child must be located in Florida.

Birth Certificates

The bill prohibits DOH from changing sex on birth certificates for gender identity changes except in cases of a scrivener's error and when a person was born with external biological sex characteristics that were unresolvably ambiguous at the time of birth. DOH may change the sex on the birth certificate upon the written request of a health practitioner stating, and providing evidence establishing, the basis for the correction. A health care practitioner who makes a misrepresentation or provides fraudulent evidence in such a request is subject to licensure discipline.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

- Section 1:** Creates s. 61.5175, F.S., relating to protection of children from gender clinical interventions
- Section 2:** Creates s. 381.991, F.S., relating to public expenditures for gender clinical interventions.
- Section 3:** Amends s. 382.016, F.S., relating to amendment of records.

- Section 4:** Creates s. 456.52, F.S., relating to prohibition on gender clinical interventions for minors.
- Section 5:** Amends s. 456.074, F.S., relating to certain health care practitioners immediate suspension of license.
- Section 6:** Creates s. 627.6411, F.S., relating to coverage of certain treatment for minors.
- Section 7:** Amends s. 641.31, F.S., relating to health maintenance contracts.
- Section 8:** Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate, negative fiscal impact on persons seeking gender clinical interventions and health care practitioners or facilities who provide such treatment.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides sufficient rule-making authority to DOH to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 27, 2023, the Health and Human Services Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Expressly prohibits changes to birth certificate based upon a person's perception of gender;
- Establishes requirements for changes to birth certificates;
- Establishes penalties for health care practitioners for making misrepresentations or providing fraudulent evidence in request for change to birth certificates;
- Revises the definition of gender clinical interventions; and
- Makes technical changes to address drafting issues.

This analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.