The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL:	SB 254
INTRODUCER:	Senators Yarborough and Perry
SUBJECT:	Treatments for Sex Reassignment
DATE:	March 10, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Brown	HP	**Pre-meeting**
2.			FP	

I. Summary:

SB 254 creates regulations relating to sex-reassignment prescriptions or procedures, as that term is defined in the bill. The bill:

- Amends statutes relating to the Uniform Child Custody Jurisdiction and Enforcement Act;
- Prohibits the expenditure of public funds by specified entities for sex-reassignment prescriptions or procedures;
- Prohibits sex-reassignment prescriptions or procedures for patients younger than 18 years of age, except that prescription treatments may continue for such patients whose treatment was commenced before, and is still active on, the bill's effective date, under specified parameters;
- Creates requirements for voluntary, informed consent that must be met in order for a patient 18 years of age or older to be treated with sex-reassignment prescriptions or procedures;
- Provides that only allopathic or osteopathic physicians may provide sex-reassignment prescriptions or procedures;
- Creates criminal penalties for the provision of sex-reassignment prescriptions or procedures in violation of the bill's prohibition or requirements;
- Provides that a practitioner who is arrested for the crime of providing sex-reassignment prescriptions or procedures to a patient younger than 18 years of age may have his or her license suspended via emergency order of the Department of Health (DOH); and
- Requires that any hospital, ambulatory surgical center, or physician's office registered for the provision of office surgery, must provide a signed attestation to the Agency for Health Care Administration (AHCA) or the DOH, as applicable, that the facility or office does not offer or provide sex-reassignment prescriptions or procedures for children, except those qualifying for the exception under the bill, and also does not refer such patients to other providers for those treatments.

The bill provides that if any provision of the bill, once enacted, or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the

bill, and those other provisions or applications can be given effect without the invalid provision or application, and to this end the provisions of the bill are severable.

The bill takes effect upon becoming a law.

II. Present Situation:

The Uniform Child Custody Jurisdiction and Enforcement Act

Background

Before uniform state custody laws were adopted, it was not uncommon for parents who did not receive legal custody of their children to cross state lines in search of a sympathetic judge who would award them custody. While this approach to "forum shopping" was often successful for parents, it created an awareness that uniform state laws were needed to resolve custody issues. Additionally, and in today's mobile society, it is not uncommon for parents of a child to live in different states or move from state to state. These issues underscore the need to have a framework that accurately determines which state has the authority to decide custody disputes between competing parents.[1]

In recognition of these issues, the Uniform Child Custody Jurisdiction and Enforcement Act, more simply known as the UCCJEA, or the Act, was developed by the Uniform Law Commissioners in 1997. The Act, which has been adopted in each state except Massachusetts, was designed to create uniformity among the states' dueling child custody statutes.[2] Florida adopted the Act in 2002.[3]

The general purposes of the Act are to:

- Avoid jurisdictional competition and conflict with courts of other states in child custody matters.
- Promote cooperation with the courts of other states so that a custody decree is rendered in the state that can best decide the case in the interest of the child.
- Discourage the use of the interstate system for continuing child custody controversies.
- Deter abductions.
- Avoid relitigating custody decisions in one state that have been determined in other states.
- Facilitate the enforcement of custody decrees of other states.
- Promote and increase the exchange of information and mutual assistance between this state's courts and other state courts concerning the same child.
- Make uniform law among the states that enact the model law.[4]

---

[1] Uniform Law Commission, *Child Custody Jurisdiction and Enforcement Act*, Act Summary, *https://www.uniformlaws.org/committees/community-home?CommunityKey=4cc1b0be-d6c5-4bc2-b157-16b0baf2c56d#:~:text=The%20Uniform%20Child%20Custody%20Jurisdiction,provisions%20for%20child%20custody%20orders*. The predecessor to the act was the Uniform Child Custody Jurisdiction Act, created in 1968.(last visited March 10, 2023).

[2] *Id*.

[3] Ch. 2002-65, s. 5, Laws of Fla. The Act is contained in ss. 61.501 – 61.542, F.S.

[4] Section 61.502, F.S.

Home State Priority

The Act resolves the basic principle of which state has initial jurisdiction to resolve a child custody dispute. Under the provisions of the Act, the home state of the child is given priority and the first opportunity to accept jurisdiction of the case. Any other state involved in the proceedings must defer to the home state, if a home state is determined.[5]

Temporary Emergency Jurisdiction

The Act makes provision for temporary emergency jurisdiction, but such jurisdiction may only be taken for the amount of time needed to secure the affected person's safety, whether that is the child, a sibling, or parent. Temporary emergency jurisdiction may "ripen" into what amounts to continuing jurisdiction over a case, but only when no other state capable of asserting continuing jurisdiction is determined, or if that state declines to accept jurisdiction.[6]

A state court has temporary emergency jurisdiction if the child is present in this state and:

- The child has been abandoned; or
- It is necessary in an emergency to protect the child because the child or a sibling or parent of the child is subjected to or threatened with mistreatment or abuse.

Under this provision, a court may take jurisdiction of the case in order to protect the child even if it is not the home state and does not have significant connection jurisdiction.

Inconvenient Forum

In recognition that this state might not be the most appropriate forum to exercise jurisdiction, the Act permits a Florida court to consider whether it is appropriate for a court in another state to exercise jurisdiction. In making its determination, the court must allow the parties to submit information and consider all relevant factors, including:

- Whether domestic violence has occurred and is likely to continue and which state can best protect the parties and the child.
- The length of time the child has resided outside of this state.
- The distance between the court in this state and the court in the state that would assume jurisdiction over the matter.
- The financial circumstances of the parties.
- Any agreement made between the parties as to which state should exercise jurisdiction.
- The nature and location of the evidence required to resolve the pending litigation, including the child's testimony.
- The ability of each state's court to decide the issue expeditiously and the procedures needed to present the evidence.

---

[5] Uniform Law Commission, *Child Custody Jurisdiction and Enforcement Act: Summary, Home State Priority,* https://www.uniformlaws.org/committees/community-home?CommunityKey=4cc1b0be-d6c5-4bc2-b157-16b0baf2c56d#:~:text=The%20Uniform%20Child%20Custody%20Jurisdiction,provisions%20for%20child%20custody%20orders(last visited March 10, 2023).

[6] Uniform Law Commission, *Child Custody Jurisdiction and Enforcement Act,* Act Summary, Temporary Emergency Jurisdiction, *https://www.uniformlaws.org/committees/community-home?CommunityKey=4cc1b0be-d6c5-4bc2-b157-16b0baf2c56d#:~:text=The%20Uniform%20Child%20Custody%20Jurisdiction,provisions%20for%20child%20custody%20orders.*(last visited March 10, 2023).

- The familiarity of the court of each state with the facts and issues in the pending litigation.

Jurisdiction Declined by Reason of Unjustifiable Conduct

The statutes also provide circumstances under which a Florida court must decline jurisdiction. Except as provided in the temporary emergency jurisdiction provisions of s. 61.517, F.S., or by another law of the state, a court in this state that appears to have jurisdiction must decline to exercise jurisdiction if a person seeking jurisdiction has engaged in "unjustifiable conduct" unless:

- The parents and others acting as parents have acquiesced in the exercise of jurisdiction;
- A court of this state that otherwise has jurisdiction under ss. 61.514 through 66.516, F.S.,[7] determines that this state is a more appropriate forum under the inconvenient forum statute; or
- No court of another state would have jurisdiction under the criteria specified in ss. 61.514 through 61.516, F.S.[8]

According to the comments offered by the drafters of the UCCJEA, this section addresses cases in which parents "act in a reprehensible manner" and will not be given an advantage for their unjustifiable conduct. Some examples of reprehensible conduct are removing, hiding, or restraining a child. When those or similar acts occur, the court must decline to exercise jurisdiction over the case.

Warrant to Take Physical Custody of Child

When a petitioner files a petition seeking enforcement of a child custody determination in court, he or she may file a verified application seeking the issuance of a warrant[9] to take physical custody of the child if:

- The child is likely to imminently suffer serious physical harm, or
- He or she is likely to be removed from this state.

It is worth noting that "serious physical harm" is not defined in this section.

If a court finds, after listening to testimony, that the child is imminently likely to suffer serious physical harm or removal from the state, the court may issue a warrant to take physical custody of the child. The statute provides that the petition must be heard on the next judicial day after the warrant is executed unless that date is impossible, then the first judicial day that is possible. The application for the warrant is required to include certain statements enumerated in s. 61.531, F.S.

The warrant to take physical custody of a child is enforceable throughout the state. If no less intrusive manner is available, a court may authorize law enforcement officers to enter private property to take physical custody of a child. Additionally, if exigent circumstances necessitate,

[7] Section 61.514, F.S., addresses initial child custody jurisdiction, s. 61.515, F.S., addresses exclusive, continuing jurisdiction, and s. 61.516, F.S., addresses jurisdiction to modify a determination.
[8] *Id*.
[9] A warrant is defined in s. 61.503(17), F.S., to be an order issued by a court that authorizes law enforcement officers to take physical custody of a child.

law enforcement officers may make a forcible entry at any hour to take physical custody of the child.

Recognition and Enforcement

Under the provisions of the Act, Florida state courts must give "full faith and credit"[10] to an order issued by another state that is consistent with the Act which enforces a child custody determination. However, full faith and credit is not to be given to that order if the order has been vacated, stayed, or modified by a court having jurisdiction to do so under the provisions of ss. 61.514 through 61.523, F.S.[11]

Managing Entities

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery for children and adults who are otherwise unable to obtain these services. SAMH programs include a range of prevention, acute interventions (e.g. crisis stabilization), residential treatment, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.[12]

In 2001, the Legislature authorized the DCF to implement behavioral health managing entities (ME) as the management structure for the delivery of local mental health and substance abuse services.[13] The implementation of the ME system initially began on a pilot basis and, in 2008, the Legislature authorized the DCF to implement MEs statewide.[14] Full implementation of the statewide managing entity system occurred in 2013, and all geographic regions are now served by a managing entity.[15]

DCF Duties

The DCF must also comply with duties with respect to the MEs, including, in part, to:

- Contract and conduct readiness reviews;
- Specify data reporting requirements and use of shared data systems;
- Define the priority populations that will receive care coordination;
- Support the development and implementation of a coordinated system of care;

[10] This is a reference to the "full faith and credit" clause contained in Article IV, s. 1, of the U.S. Constitution. The phrase states "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state."

[11] Those statutes address: Initial child custody jurisdiction; Exclusive, continuing jurisdiction; Jurisdiction to modify a determination; Temporary emergency jurisdiction; Notice; opportunity to be heard; joinder; Simultaneous proceedings; Inconvenient forum; Jurisdiction declined by reason of conduct; Information to be submitted to the court; and Appearance of parties and child.

[12] *See* chs. 394 and 397, F.S.

[13] Chapter 2001-191, L.O.F.

[14] Chapter 2008-243, L.O.F.

[15] Florida Tax Watch, *Analysis of Florida's Behavioral Health Managing Entity Models*, p. 4, March 2015, available at https://floridataxwatch.org/Research/Full-Library/ArtMID/34407/ArticleID/15758/Analysis-of-Floridas-Behavioral-Health-Managing-Entities-Model (last visited March 10, 2023).

- Contract to support efficient and effective administration and ensure accountability for performance; and[16]
- Periodically review contract and reporting requirements and reduce costly, duplicative, and unnecessary administrative requirements.[17]

Contracted MEs

The MEs are required to comply with various statutory duties, including, in part, to:
- Maintain a governing board;
- Promote and support care coordination;[18]
- Develop a comprehensive list of qualified providers;
- Monitor network providers' performances;
- Manage and allocate funds for services in accordance with federal and state laws, rules, regulations and grant requirements; and
- Operate in a transparent manner, providing access to information, notice of meetings, and opportunities for public participation in ME decision making.[19]

Florida Medicaid Managed Care Plans

In Florida, a large majority of Medicaid recipients receive their services through a managed care plan contracted with the AHCA under the Statewide Medicaid Managed Care (SMMC) program.[20] SMMC benefits are authorized through federal waivers and are specifically required by the Florida Legislature in ss. 409.973 and 409.98, F.S. SMMC benefits cover primary, acute, preventive, behavioral health, prescribed drugs, long-term care, and dental services.

Hospitals

Hospitals are regulated by the AHCA under ch. 395, F.S., and the general licensure provisions of part II, of ch. 408, F.S. Hospitals offer a range of health care services with beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care.[21] Hospitals must make regularly available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment.[22]

The AHCA must maintain an inventory of hospitals with an emergency department.[23] The inventory must list all services within the capability of each hospital, and such services must

[16] Section 394.9082(7), F.S., details the performance measurements and accountability requirements of MEs.
[17] Section 394.9082(3), F.S.
[18] Section 394.9082(6), F.S., sets out the network accreditation and systems coordination agreement requirements.
[19] Section 394.9082(5), F.S.
[20] As of January 31, 2023, Florida Medicaid's total enrollment comprised 5,696,638 persons. Eighty-seven percent were enrolled in a Medicaid managed care plan. *See:* https://ahca.myflorida.com/medicaid/Finance/data_analytics/enrollment_report/docs/ENR_202301.xls(last visited March 10, 2023).
[21] Section 395.002(12), F.S.
[22] *Id.*
[23] Section 395.1041(2), F.S.

appear on the face of the hospital's license. As of March 2, 2023, there are 323 licensed hospitals in the state.[24]

Section 395.1055, F.S., authorizes the AHCA to adopt rules for hospitals. Separate standards may be provided for general and specialty hospitals.[25] The rules for general and specialty hospitals must include minimum standards to ensure:

- A sufficient number of qualified types of personnel and occupational disciplines are on duty and available at all times to provide necessary and adequate patient care;
- Infection control, housekeeping, sanitary conditions, and medical record procedures are established and implemented to adequately protect patients;
- A comprehensive emergency management plan is prepared and updated annually;
- Licensed facilities are established, organized, and operated consistent with established standards and rules; and
- Licensed facility beds conform to minimum space, equipment, and furnishing standards.[26]

The minimum standards for hospital licensure are contained in Chapter 59A-3, F.A.C.

Ambulatory Surgical Centers (ASC)

An ASC is a facility that is not a part of a hospital, the primary purpose of which is to provide elective surgical care, in which the patient is admitted and discharged within 24 hours.[27] ASCs are licensed and regulated by the AHCA under the same regulatory framework as hospitals, and the AHCA is authorized to adopt rules specifically for ASCs.[28,29] Currently, there are 501 licensed ASCs in Florida.[30]

Applicants for ASC licensure must submit information detailed in Rule 59A-5.003, F.A.C., to the AHCA prior to accepting patients for care or treatment. Upon receipt of an initial application, the AHCA is required to conduct a survey to determine compliance with all laws and rules. ASCs are required to provide certain information during the initial inspection, including:

- Governing body bylaws, rules, and regulations;
- Medical staff bylaws, rules, and regulations;
- A roster of medical staff members;
- The ASC's nursing procedures manual;
- A roster of registered nurses and licensed practical nurses with current license numbers;
- A fire plan; and

[24] Agency for Health Care Administration, Florida Health Finder Report, available at https://quality.healthfinder.fl.gov/facilitylocator/ListFacilities.aspx, (reports generated on Mar. 3, 2023)(last visited Mar. 10, 2023).
[25] Section 395.1055(2), F.S.
[26] Section 395.1055(1), F.S.
[27] Section 395.002(3), F.S.
[28] Section 395.1055, F.S.
[29] Sections 395.001-1065, F.S., and Part II, Chapter 408, F.S.
[30] Agency for Health Care Administration, Florida Health Finder Report, available at https://quality.healthfinder.fl.gov/facilitylocator/ListFacilities.aspx, (reports generated on Mar. 3, 2023)(last visited Mar. 10, 2023).

- The comprehensive Emergency Management Plan.[31]

The minimum standards for ASCs are contained in Chapter 59A-5, F.A.C.

Florida's Board of Medicine

The Board of Medicine (BOM) is the state's regulatory board for licensed medical doctors, also known as allopathic physicians. The BOM is composed of 15 members appointed by the Governor and confirmed by the Senate for four year terms who serve until their successors are appointed. Twelve members of the BOM must be licensed physicians in good standing who are state residents and who have been engaged in the active practice or teaching of medicine for at least four years immediately preceding their appointment. One of the physicians must be on the full-time faculty of a medical school in Florida. One physician must be in private practice and a full-time staff member of a statutory teaching hospital in Florida.[32] One physician must be a graduate of a foreign medical school. One member must be a health care risk manager. One member must be age 60 or older. The remaining three members must be residents of Florida who are not, and never have been, licensed health care practitioners.[33]

Florida's Board of Osteopathic Medicine

The Board of Osteopathic Medicine (BOOM) is the state's regulatory board for osteopathic physicians. The BOOM is composed of seven members appointed by the Governor and confirmed by the Senate. Five members of the board must be licensed osteopathic physicians in good standing who are Florida residents and who have been engaged in the practice of osteopathic medicine for at least four years immediately prior to their appointment. At least one member of the BOOM must be 60 years of age or older. The two members must be citizens of the state who are not, and have never been, licensed health care practitioners.[34]

Office Surgeries

In Florida, surgeries performed in a doctor's office, are regulated under ss. 458.328 and 459.0138, F.S. Both sections are identical except for the references to the BOM or the BOOM.

Both statutes require that a physician who performs liposuction procedures in which more than 1,000 cubic centimeters of supernatant fat is removed, Level II surgical procedures, and Level III surgical procedures in an office setting, to register the doctor's office with the DOH, unless that office is licensed as a facility under ch. 395, F.S.

Level II procedures and Level III procedures are not defined in the Florida Statutes, but the respective boards have defined three levels of office surgery by administrative rule,[35] A physician may only perform a procedure or surgery identified in ss. 458.328(1)(a) or 459.0138(1)(a), F.S., in an office that is registered with the DOH. The applicable board must

[31] Rule 59A-5.003(5), F.A.C.
[32] See s. 408.07, F.S.
[33] Section 458.307., F.S,
[34] Section 459.004, F.S.
[35] See Fla. Admin. Code R. 64B8-9.009 and 64B15-14.007,(2022).

impose a fine of $5,000 a day on a physician who performs a procedure or surgery in an office that is not registered.

As a condition of registration, each office, and each physician practicing at the office, must establish financial responsibility by demonstrating that he or she has met and continues to maintain, at a minimum, the same requirements applicable to physicians in ss. 458.320 and 459.0085, F.S., as applicable. Each registered office must designate a physician who is responsible for the office's compliance with the office health and safety requirements.

The DOH may suspend or revoke the registration of an office in which a procedure or surgery is performed and any of the office's physicians, owners, or operators have failed register or comply with the requirements of ss. 458.238 and 459.0138, F.S. or rules adopted thereunder.

The DOH is required to inspect a registered doctor's office annually unless the office is accredited by a nationally-recognized accrediting agency or an accrediting organization approved by the BOM or the BOOM. The actual costs of registration, inspection, and/or accreditation are to be paid by the person seeking to register and operate the office in which office surgeries are performed. All other aspects of office surgeries are regulated by administrative rules promulgated by the BOM and the BOOM.

Disorders of Sexual Development

Disorders of sexual development (DSD) encompass a group of congenital conditions associated with atypical development of internal and external genital structures. These conditions can be associated with variations in genes, developmental programming, and hormones. Affected individuals may be recognized at birth due to ambiguity of the external genitalia. Others may present later with postnatal virilization, delayed/absent puberty, or infertility. The estimated frequency of genital ambiguity is reported to be in the range of 1 to 2000 to 1 to 4500.[36]

Classification of DSD

DSDs are classified into several categories:

- 46, XX DSD;
- 46, XY DSD;
- Sex Chromosome DSD;
- XX or XY Reversal Disorder, Ovotesticular Disorder[37];

[36]. Hughes IA, Nihoul-Fékété C, Thomas B, et al. Consequences of the ESPE/LWPES guidelines for diagnosis and treatment of disorders of sex development. Best Practice Research Clinical Endocrinology Metabolism. Vol. 21, pp. 351–65. [PubMed: 17875484] https://www.clinicalkey.com/#!/content/playContent/1-s2.0-S1521690X07000553?returnurl=null&referrer=null

[37] Vilain, Eric, M.D., Ph.D., Professor of Human Genetics, Pediatrics and Urology; Director, Center for Gender-Based Biology; Chief, Medical Genetics, Department of Pediatrics; David Geffen School of Medicine at UCLA, National Organization of Rare Diseases, *Ovotesticular Disorder of Sex Developmen*t, available at https://rarediseases.org/rare-diseases/ovotesticular-disorder-of-sex-development/ (last visited Mar. 10, 2023). Ovotesticular disorder of sex development (ovotesticular DSD) is a very rare disorder in which an infant is born with the internal reproductive organs (gonads) of both sexes (female ovaries and male testes). The gonads can be any combination of ovary, testes or combined ovary and testes (ovotestes).

- XY Persistent Mullerian Duct Syndrome;[38] and
- Malformation Syndrome.[39]

The category of 46, XX DSD includes virilized females such as girls with a virilizing congenital adrenal hyperplasia and girls with aberrant ovarian development.[40] The category of 46, XY DSD patients includes patients with abnormal testicular differentiation, defects in testosterone biosynthesis, and impaired testosterone action. Sex chromosome DSDs include Turner Syndrome, [41] Klinefelter Syndrome[42], and Mosaicism 45, X/46, XY gonadal dysgenesis. In general, patients with Turner Syndrome and Klinefelter Syndrome do not present with genital ambiguity. Other DSDs include XX sex reversal, XY sex reversal, and ovotesticular disorder.

Treatments for Sex Reassignment in Minors

There are currently no prohibitions or regulations in the Florida Statutes specifically pertaining to health care practitioners treating minors for sex reassignment, including hormone therapy, surgery, facial hair removal, interventions for the modification of speech and communication, and behavioral adaptations such as genital tucking or packing, or chest binding.[43]

Definitions

The American Academy of Pediatrics (AAP), in a policy statement relating to the care and treatment of gender dysphoric children and youth, defines "sex" as a label, generally "male" or

---

[38] Witchel, Selma Feldman, M.D.,Best Practice and Research, Clinical Obstetrics & Gynecology, Vol. 48 pp. 90–102, Apr. 2018, available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5866176/pdf/nihms922328.pdf (last visited Mar. 9, 2023). Persistent Müllerian Duct Syndrome (PMDS) is a rare autosomal recessive disorder characterized by the persistence of Müllerian structures in a boy. Typically, phallic development and testicular function are normal. This disorder is typically diagnosed during surgery for inguinal hernia and/or cryptorchidism. Often, both testes are on the same side (transverse testicular ectopia) and may be embedded in the broad ligament. Abnormal development of male excretory ducts is common. Although most men are infertile, fertility may be possible if at least one testis is scrotal with intact excretory ducts.

[39] Id. Malformation syndrome is when patients initially appear similar to patients with DSD, but have disorders of urogenital tract development.

[40] The most common form of virilizing congenital adrenal hyperplasia is 21-hydroxylase deficiency due to mutations in the 21-hydroxylase (CYP21A2) gene. Infant girls with classic salt-losing 21-hydroxylase deficiency usually present in the immediate neonatal period due to genital ambiguity. For affected female infants, virilization of the external genitalia ranges from clitoromegaly to perineal hypospadias with chordee to complete fusion of labiourethral and labioscrotal folds. The magnitude of external genital virilization may be so extensive that affected female infants appear to be males with bilateral undescended testes.

[41] Paller, Amy S. M.D., Mancini, Anthony J. M.D., Hurwitz Clinical Pediatric Dermatology (Fourth Edition), 2011, available at https://www.sciencedirect.com/topics/medicine-and-dentistry/gonadal-dysgenesis#:~:text=Gonadal%20Dysgenesis%2FTurner%20Syndrome,in%205000%20female%20live%20births. (last visited Mar. 9, 2023).Gonadal dysgenesis in females, or Turner syndrome (TS), is a condition characterized by short stature and ovarian dysgenesis. Patients are females with either a missing X chromosome (45, X) or an abnormality of one of the X chromosomes. It occurs in 1 in 2000 to 1 in 5000 female live births.

[42] Mayo Clinic, *Klinefelter Syndrome*, available at https://www.mayoclinic.org/diseases-conditions/klinefelter-syndrome/symptoms-causes/syc-0353949#:~:text=Klinefelter%20syndrome%20occurs%20as%20a,X%20sex%20chromosomes%20(XX). (last visited Mar. 9, 2023).Klinefelter syndrome, sometimes called Klinefelter's, KS or XXY is where boys are born with an extra X chromosome.

[43] Deutsch, Madeline B., M.D., M.P.H., Editor; Guidelines for the Primary Care of Transgender and Gender Nonbinary People, Medical Director, UCSF Gender Affirming Health Program Professor of Clinical Family and Community Medicine; University of California, San Francisco, *Overview of gender-affirming treatments and procedures*, available at https://transcare.ucsf.edu/guidelines/overview (last visited Mar. 10, 2023).

"female," that is typically assigned at birth on the basis of genetic and anatomic characteristics, such as genital anatomy, chromosomes, and sex hormone levels.[44]

According to the American Psychiatric Association (APA), some people will experience "gender dysphoria," which refers to psychological distress that results from an incongruence between one's sex assigned at birth and one's gender identity. Though gender dysphoria often begins in childhood, some people may not experience it until after puberty or much later. The APA defines "gender dysphoria" as a clinical symptom that is characterized by a sense of alienation to some or all of the physical characteristics or social roles of one's assigned gender; with a psychiatric diagnosis in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR),[45] which has its focus on the distress that stems from the incongruence between one's expressed or experienced gender and the birth gender.

People with gender dysphoria may pursue multiple types of interventions or treatments, including social affirmation (e.g., changing one's name and pronouns), legal affirmation (e.g., changing gender markers on one's government-issued documents), medical affirmation (e.g., pubertal suppression or sex-reassignment hormones), and/or surgery (e.g., vaginoplasty, facial feminization surgery, breast augmentation, masculine chest reconstruction, etc.).

Diagnosis of Gender Dysphoria

The DSM-5-TR provides for one overarching diagnosis for gender dysphoria with separate specific criteria for children and for adolescents and adults.[46]

Gender Dysphoria in Adolescents

The DSM-5-TR defines gender dysphoria in adolescents and adults as a marked incongruence between one's experienced/expressed gender and their assigned gender, lasting at least six months, as manifested by at least two of the following:

- A marked incongruence between one's experienced or expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated secondary sex characteristics);
- A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics);
- A strong desire to have the primary and/or secondary sex characteristics of the other gender;
- A strong desire to be of the other gender (or some alternative gender different from one's assigned gender);
- A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender); or

[44] The American Academy of Pediatrics, PEDIATRIC, Vol. 142, (4), Oct. 2018, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, available at https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for?autologincheck=redirected (last visited Mar. 10, 2023).
[45] Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR). American Psychiatric Association. 2022.
[46] Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR). American Psychiatric Association. 2022.

- A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).[47,48]

In order to meet criteria for the diagnosis, the condition must also be associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.[49]

Gender Dysphoria in Children

The DSM-5-TR defines gender dysphoria in children as a marked incongruence between one's experienced or expressed gender and assigned gender, lasting at least six months, as manifested by at least six of the following (one of which must be the first criterion):

- A strong desire to be of the other gender or an insistence that one is the other gender (or some alternative gender different from one's assigned gender);
- In boys, a strong preference for cross-dressing or simulating female attire; or in girls, a strong preference for wearing only typical masculine clothing and a strong resistance to the wearing of typical feminine clothing;
- A strong preference for cross-gender roles in make-believe play or fantasy play;
- A strong preference for the toys, games, or activities stereotypically used or engaged in by the other gender;
- A strong preference for playmates of the other gender;
- In boys, a strong rejection of typically masculine toys, games, and activities and a strong avoidance of rough-and-tumble play; or in girls, a strong rejection of typically feminine toys, games, and activities;
- A strong dislike of one's own sexual anatomy; or
- A strong desire to have the physical sex characteristics that match one's experienced gender.

As with the diagnostic criteria for adolescents and adults, the condition must also be associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.[50]

Sex Reassignment Treatment for Minors

Behavioral Health Therapy for Minors

Behavioral health therapy may include open-ended exploration of feelings and experiences of gender identity and expression, without the therapist having any pre-defined gender identity or expression outcome defined as preferable to another. According to the AAP, such treatment is

[47] *Id.*
[48] Hembree, W. C., Cohen-Kettenis, P. T., Gooren, L., Hannema, S. E., Meyer, W. J., Murad, M. H., ... & T'Sjoen, G. G., The Journal of Clinical Endocrinology & Metabolism, 102(11), 3869-3903. (2017), *Endocrine treatment of gender-dysphoric/gender-incongruent persons: an endocrine society clinical practice guideline,* available at https://academic.oup.com/jcem/article/102/11/3869/4157558 (last visited Mar. 10, 2023).
[49] *Id.*
[50] Hembree, W. C., Cohen-Kettenis, P. T., Gooren, L., Hannema, S. E., Meyer, W. J., Murad, M. H., ... & T'Sjoen, G. G., The Journal of Clinical Endocrinology & Metabolism, 102(11), 3869-3903. (2017), *Endocrine treatment of gender-dysphoric/gender-incongruent persons: an endocrine society clinical practice guideline,* available at https://academic.oup.com/jcem/article/102/11/3869/4157558 (last visited Mar. 10, 2023).

best facilitated through the integration of medical, mental health, and social services, including specific resources and supports for parents and families.[51]

Medical Treatment for Minors

According to the AAP policy statement, medical treatment for gender dysphoria involves decisions about whether to and when to initiate treatment and careful consideration of risks, benefits, and other factors unique to each patient and family. Many protocols suggest that clinical assessment of youth diagnosed as gender dysphoric is ideally conducted on an ongoing basis in the setting of a collaborative, multidisciplinary approach, which, in addition to the patient and family, may include the pediatric provider, a mental health provider, social and legal supports, and a pediatric endocrinologist or adolescent-medicine gender specialist, if available.[52]

According to the APA, medical treatment may include pubertal suppression for adolescents with gender dysphoria, and sex reassignment hormones like estrogen and testosterone for older adolescents and adults,[53] but should only be started following the updated American Association of Clinical Endocrinologists (AACE) clinical practice guidelines published in 2017,[54] which is supported by the American Association of Clinical Endocrinologists, American Society of Andrology, European Society for Pediatric Endocrinology, European Society of Endocrinology, Pediatric Endocrine Society, and World Professional Association for Transgender Health, and which includes specific and extensive guidelines.[55]

Puberty Suppressing Medications

The AACE does not recommend hormone treatment for prepubertal gender dysphoric or gender-incongruent persons. Clinicians who recommend such endocrine treatments must be appropriately trained diagnosing clinicians or a mental health provider for adolescents.[56]

---

[51] The American Academy of Pediatrics, PEDIATRIC, Vol. 142, (4), Oct. 2018, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, available at https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for?autologincheck=redirected (last visited Mar. 10, 2023).

[52] The American Academy of Pediatrics, PEDIATRIC, Vol. 142, (4), Oct. 2018, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, available at https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for?autologincheck=redirected (last visited Mar. 10, 2023).

[53] Turban, Jack, M.D., M.H.S., The American Psychiatric Association, *What is Gender Dysphoria? Aug. 2022,* available at https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria#:~:text=Gender%20dysphoria%3A%20A%20concept%20designated,and%2For%20secondary%20sex%20characteristics. (last visited Mar. 10, 2023).

[54] Hembree, W. C., Cohen-Kettenis, P. T., Gooren, L., Hannema, S. E., Meyer, W. J., Murad, M. H., & T'Sjoen, G. G., The Journal of Clinical Endocrinology & Metabolism, *Endocrine treatment of gender-dysphoric/gender-incongruent persons: an endocrine society clinical practice guidelines*, Vol. 102, (11), 3869-3903 (Sept. 11, 2017) available at https://academic.oup.com/jcem/article/102/11/3869/4157558?login=false (last visited Mar. 10, 2023).

[55] *Id.*

[56] Hembree, W. C., Cohen-Kettenis, P. T., Gooren, L., Hannema, S. E., Meyer, W. J., Murad, M. H., & T'Sjoen, G. G., The Journal of Clinical Endocrinology & Metabolism, *Endocrine treatment of gender-dysphoric/gender-incongruent persons: an endocrine society clinical practice guidelines*, Vol. 102, (11), 3869-3903 (Sept. 11, 2017) available at https://academic.oup.com/jcem/article/102/11/3869/4157558?login=false (last visited Mar. 10, 2023).

Under the AACE clinical practice guidelines, adolescents are eligible for puberty suppressing hormone treatment if:

- A qualified mental health professional (MHP)[57] has confirmed that:
  - The adolescent has demonstrated a long-lasting and intense pattern of gender nonconformity or gender dysphoria that worsened with the onset of puberty;
  - Any coexisting psychological, medical, or social problems that could interfere with treatment have been addressed, such that the adolescent's situation and functioning are stable enough to start treatment; and
  - The adolescent has sufficient mental capacity to give informed consent to this treatment; and
- The adolescent:
  - Has been informed of the effects and side effects of treatment (including potential loss of fertility if the individual subsequently continues with sex hormone treatment) and options to preserve fertility; and
  - Has given informed consent and (particularly when the adolescent has not reached the age of legal medical consent, depending on applicable laws) the parents or other caretakers or guardians have consented to the treatment and are involved in supporting the adolescent throughout the treatment process; and
  - A pediatric endocrinologist or other clinician experienced in pubertal assessment:
    - Agrees with the indication for puberty blocking hormone treatment;
    - Has confirmed that puberty has started in the adolescent; and
    - Has confirmed that there are no medical contraindications to puberty suppressing hormone treatment.

The AAP approves of the use of reversible puberty-suppressing hormones in adolescents who experience gender dysphoria to prevent development of secondary sex characteristics and provide time, up until age 16, for the individual and the family to explore gender identity, access psychosocial supports, develop coping skills, and further define appropriate treatment goals. If pubertal suppression treatment is suspended, then endogenous puberty will resume.[58]

[57] The AACE clinical practice guidelines, advise that only qualified mental health professionals (MHPs) who meet the following criteria should diagnose gender dysphoria or gender incongruence in children and adolescents: Training in child and adolescent developmental psychology and psychopathology; Competence in using the DSM and/or the ICD for diagnostic purposes; The ability to make a distinction between gender dysphoria or gender incongruence and conditions that have similar features (e.g., body dysmorphic disorder); Training in diagnosing psychiatric conditions; The ability to undertake or refer for appropriate treatment; The ability to psychosocially assess the person's understanding and social conditions that can impact sex reassignment hormone therapy; A practice of regularly attending relevant professional meetings; and Knowledge of the criteria for puberty blocking and sex reassignment hormone treatment in adolescents.

[58] The American Academy of Pediatrics, PEDIATRIC, Vol. 142, (4), Oct. 2018, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, available at https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for?autologincheck=redirected (last visited Mar. 6, 2023).

Side Effects of Puberty Suppressive Therapy

There is emerging evidence of potential harm from using puberty blockers, according to reviews of scientific papers and interviews with more than 50 doctors and academic experts around the world.[59]

The drugs suppress estrogen and testosterone, hormones that help develop the reproductive system but also affect the bones, the brain and other parts of the body. During puberty, bone mass typically surges, determining a lifetime of bone health. When adolescents are using blockers, bone density growth stops, on average, according to an analysis commissioned by The New York Times of observational studies examining the effects.[60]

Many doctors treating minors for gender dysphoria believe their patients will recover that loss when they go off blockers. But, two studies from the analysis that tracked patients' bone strength while using blockers, and through the first years of sex hormone treatment, found that many do not fully rebound and lag behind their peers.[61]

That could lead to heightened risk of debilitating fractures earlier than would be expected from normal aging – in their 50s instead of 60s – and more immediate harm for patients who start treatment with already weak bones, experts say.

Many physicians in the U.S. and elsewhere are prescribing blockers to patients at the first stage of puberty – as early as age 8 – and allowing them to progress to sex hormones as soon as 12 or 13. Starting treatment at young ages, they believe, helps patients become better aligned physically with their gender identity and helps protect their bones. But, that could force life-altering choices, other doctors warn, before patients know who they really are. Puberty can help clarify gender, the doctors say, for some adolescents reinforcing their sex at birth, and for others confirming that they are gender dysphoric.[62]

In October 2022, England's National Health Service proposed restricting use of the drugs for gender dysphoric youths to research settings. Sweden and Finland have also placed limits on the treatment, concerned not just with the risk of blockers, but the steep rise in young patients, the psychiatric issues that many exhibit, and the extent to which their mental health should be assessed before treatment.[63]

A full accounting of puberty blockers' risk to bones is not possible. While the Endocrine Society recommends baseline bone scans and then repeat scans every one to two years for gender dysphoric youths, the World Professional Association for Transgender Health and the AAP provide little guidance about whether to do so. Some doctors require regular scans and recommend calcium and exercise to help to protect bones; others do not. Because most treatment is provided outside of research studies, there's little public documentation of outcomes.[64]

---

[59] The New York Times, *They Paused Puberty, but Is There a Cost?*, Nov. 14, 2022, available at: https://www.nytimes.com/2022/11/14/health/puberty-blockers-transgender.html (last visited Mar. 10, 2023).
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *Id.*

But it's increasingly evident that the drugs are associated with deficits in bone development. During the teen years, bone density typically surges by about 8 to 12 percent a year. The analysis commissioned by The New York Times examined seven studies from the Netherlands, Canada and England involving about 500 gender dysphoric teens from 1998 through 2021. Researchers observed that while on puberty blockers, the teens did not gain any bone density, on average, and lost significant ground compared to their peers, according to the analysis by researchers at McMaster University in Canada.[65]

If any harm resulted from the use of puberty blockers, it likely would not be evident until decades later, with fractures. However, for children who already have weak bones as they start treatment, the dangers could be more immediate. While there is no systematic record-keeping of such cases, some anecdotal evidence is available.[66]

Medical Risks Associated with Hormone Therapy for Adolescents

According to the AACE clinical practice guidelines, males seeking to transition to female with estrogen, have a very high risk of developing thromboembolic[67] side effects. Males transitioning to female also have a moderate risk of developing the following adverse outcomes:[68]

- ·Macroprolactinoma;[69]
- ·Breast cancer;
- ·Coronary artery disease;
- ·Cerebrovascular disease;
- ·Cholelithiasis[70]; or
- ·Hypertriglyceridemia.[71]

According to the AACE clinical practice guidelines, females seeking to transition to male with testosterone, have a very high risk of experiencing erythrocytosis[72] and a moderate risk of the following adverse reactions:

---

[65] *Id.*

[66] *Id.*

[67] "Thromboembolic" side effects refer to blood clots in the veins. Merriam Webster Dictionary, available at https://www.merriam-webster.com/dictionary/thromboembolism (last visited Mar. 10, 2023).

[68] Hembree, W. C., Cohen-Kettenis, P. T., Gooren, L., Hannema, S. E., Meyer, W. J., Murad, M. H., & T'Sjoen, G. G., The Journal of Clinical Endocrinology & Metabolism, *Endocrine treatment of gender-dysphoric/gender-incongruent persons: an endocrine society clinical practice guidelines*, Vol. 102, (11), 3869-3903 (Sept. 11, 2017) available at https://academic.oup.com/jcem/article/102/11/3869/4157558?login=false (last visited Mar. 10, 2023).

[69] Macroprolactinoma is a rare tumor with increasing incidence in young people and men, whose biological behavior seems to be more aggressive. Clinically, it manifests in the form of visual disturbances and/or headaches due to the compressive effect of the tumor and symptoms arising from the hyperprolactinemia. Iglesias, J.J. Diez, QJM: An International Journal of Medicine, Volume 106, (6), pp. 495–504, Jan. 16, 2013, available at https://academic.oup.com/qjmed/article/106/6/495/1538299 (last visited Mar. 10, 2023).

[70] Cholelithiasis means production of gallstones, Merriam Webster Dictionary, available at https://www.merriam-webster.com/dictionary/cholelithiasis (last visited Mar. 10, 2023).

[71] Hypertriglyceridemia is a condition in which triglyceride levels (fats) are elevated in your blood. The Cleveland Clinic, *What is Hypertriglyceridemia?* available at https://my.clevelandclinic.org/health/diseases/23942-hypertriglyceridemia (last visited Mar. 10, 2023).

[72] Erythrocytosis is having a high concentration of red blood cells. Your levels may be high for many reasons. Some causes, like dehydration, are less concerning than others, like polycythemia vera, a serious blood disorder. Getting diagnosed and receiving treatment can prevent complications associated with erythrocytosis, like life-threatening blood clots. The Cleveland

- Severe liver dysfunction;
- Coronary artery disease;
- Cerebrovascular disease;
- Hypertension; or
- Breast or uterine cancer.[73]

Sexual Reassignment Surgeries

A wide range of surgeries are available. Those include surgeries specific to sex reassignment, as well as procedures commonly performed for purposes unrelated to sex reassignment. Surgeries specific to sex reassignment include:[74]

- Feminizing vaginoplasty;
- Masculinizing phalloplasty and scrotoplasty;
- Metoidioplasty;[75]
- Masculinizing chest surgery ("top surgery");
- Facial feminization procedures;
- Reduction thyrochondroplasty (tracheal cartilage shave); and
- Voice surgery.

According to the AAP policy statement and the 2017 AACE clinical practice guidelines, these surgeries are typically performed on adults, although adolescents may be considered on a case by case basis. Eligibility criteria for surgical interventions among adolescents are not clearly defined between established protocols and practice. Eligibility is to be determined on a case-by-case basis with the adolescent and the family, along with input from medical, mental health, and surgical providers.

Federal Position on Sex Reassignment Medical Treatment

On May 25, 2021, the U.S. Department of Health and Human Services (HHS) published a notification consistent with the U.S. Supreme Court's decision in *Bostock v. Clayton County*[76] that HHS would interpret and enforce s. 1557 of the Affordable Care Act (ACA) to prohibiting discrimination on the basis of sex to include:

- Discrimination on the basis of sexual orientation; and

Clinic, *Erythrocytosis,* available at https://my.clevelandclinic.org/health/diseases/23468-erythrocytosis (last visited Mar. 10, 2023).

[73] Hembree, W. C., Cohen-Kettenis, P. T., Gooren, L., Hannema, S. E., Meyer, W. J., Murad, M. H., & T'Sjoen, G. G., The Journal of Clinical Endocrinology & Metabolism, *Endocrine treatment of gender-dysphoric/gender-incongruent persons: an endocrine society clinical practice guidelines*, Vol. 102, (11), 3869-3903 (Sept. 11, 2017) available at https://academic.oup.com/jcem/article/102/11/3869/4157558?login=false (last visited Mar. 10, 2023).

[74] Deutsch, Madeline B., M.D., M.P.H., Editor; Guidelines for the Primary Care of Transgender and Gender Nonbinary People, Medical Director, UCSF Gender Affirming Health Program Professor of Clinical Family and Community Medicine; University of California, San Francisco, *Supporting Evidence For Providing Gender-Affirming Treatments And Procedures* available at: https://transcare.ucsf.edu/guidelines/overview (last visited Mar. 10, 2023).

[75] *See* https://my.clevelandclinic.org/health/treatments/21668-metoidioplasty (last visited Mar. 10, 2023).

[76] *Bostock v. Clayton County, 590 U.S. ___; 140 S. Ct. 1731; 207 L. Ed. 2d 218; 2020 WL 3146686; 2020 U.S. LEXIS 3252* (2020). On June 15, 2020, the U.S. Supreme Court held that everyone in every state in the country who works at or applies for a job with an employer that has at least 15 employees is protected under federal law against employment discrimination based on sexual orientation or gender identity.

- Discrimination on the basis of gender identity.[77]

Section 1557 of the ACA prohibits discrimination on the bases of race, color, national origin, sex, age, and disability in covered health programs or activities.[78] The HHS interpretation guides the Office for Civil Rights (OCR) in processing complaints and conducting investigations but does not itself determine the outcome in any particular case or set of facts.

On March 2, 2022, HHS issued additional guidance, indicating that s. 1557 of the ACA prohibits health care programs that are federally funded from discriminating against patients on the basis of sex and prohibits federally funded entities from restricting an individual's ability to receive medically necessary health care, including sex reassignment treatment, on the basis of birth sex or gender identity, based on *Bostock*.[79]

In response, Texas filed a lawsuit against the HHS and the Equal Opportunity Employment Commission (EEOC). October 1, 2022, the Federal District Court issued an opinion and order declaring the March 2, 2022, HHS guidance concerning sex reassignment medical treatment to be arbitrary, capricious, unlawful, in violation of the Federal Administrative Procedure Act, and set it aside.[80]

The HHS Office of Civil Rights is evaluating its next steps in light of the judgment in *Texas v. EEOC* but is reportedly complying with the court's order.[81]

---

[77] National Archives and records administration, Federal Register, *Notification of Interpretation and Enforcement of Section 1557 of the Affordable Care Act and Title IX of the Education Amendments of 1972*, available at https://www.federalregister.gov/documents/2021/05/25/2021-10477/notification-of-interpretation-and-enforcement-of-section-1557-of-the-affordable-care-act-and-title#:~:text=Section%201557%20prohibits%20discrimination%20on,Rights%20Act%20of%201964%20(Pub. last visited Mar. 10, 2023).

[78] 42 U.S.C. 18116(a),which states: An individual shall not, on the ground prohibited under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000D et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), or SECTION 794 OF TITLE 29, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under this title 1 (or amendments). The enforcement mechanisms provided for and available under such title VI, title IX, section 794, or such Age Discrimination Act shall apply for purposes of violations of this subsection.

[79] U.S. Department Of Health And Human Services, Office for Civil Rights, *HHS Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy*, March 2, 2022, available at https://www.hhs.gov/sites/default/files/hhs-ocr-notice-and-guidance-gender-affirming-care.pdf (last visited Mar. 3, 2023).

[80] *Texas vs. EEOC, et. al,* U.S. District Court, Nor. Dist. Texas, Case # 2:21-CV-194-Z, *Opinion and Order*, Oct. 1, 2022, available at https://www.eeoc.gov/sites/default/files/2022-10/downloadfile.pdf (last visited Mar. 3, 2023).

[81] U.S. Department Of Health and Human Services, Office for Civil Rights, H*HS Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy,* available at https://www.hhs.gov/sites/default/files/hhs-ocr-notice-and-guidance-gender-affirming-care.pdf (last visited Mar. 3, 2023).

On June 15, 2022, President Joe Biden signed Executive Order 14075,[82] which calls on the U.S. Department of Education and the HHS to increase access to sex reassignment medical treatment and develop ways to counter state efforts aimed at limiting such treatments for minors.[83]

Florida's Position on Sex Reassignment Medical Treatment

Department of Health Guidelines

On April 20, 2022, the DOH issued Florida guidelines for *Treatment of Gender Dysphoria for Children and Adolescents*[84] to clarify evidence cited on a fact sheet[85] released one month earlier by the HHS for the purpose of providing federal guidance on treating gender dysphoria for children and adolescents.

The DOH guidance from April 2022 included the following:

- Systematic reviews on hormonal treatment for young people show a trend of low-quality evidence, small sample sizes, and medium to high risk of bias.
- A paper published in the International Review of Psychiatry states that 80 percent of those seeking clinical care will lose their desire to identify with the non-birth sex.
- Due to the lack of conclusive evidence, and the potential for long-term, irreversible effects, the DOH guidelines are as follows:
  - Social gender transition should not be a treatment option for children or adolescents.
  - Anyone under 18 should not be prescribed puberty blockers or hormone therapy.
  - Gender reassignment surgery should not be a treatment option for children or adolescents.
  - Children and adolescents should be provided social support by peers and family and seek counseling from a licensed provider.
- These guidelines do not apply to procedures or treatments for children or adolescents born with a genetically or biochemically verifiable disorder of sex development (DSD).

These DOH guidelines are non-binding and do not carry the force of law or rule. The guidance ended with "Parents are encouraged to reach out to their child's health care provider for more information." The BOM and the BOOM – not DOH nor the Surgeon General – have statutory authority to establish standards of care by rule for physicians who may treat patients diagnosed with gender dysphoria.

---

[82] Federal Registry, Vol. 87., No. 188, June 15, 2022, Executive Order 14075, *Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals*, available at https://www.govinfo.gov/content/pkg/FR-2022-06-21/pdf/2022-13391.pdf (last visited Mar. 7, 2023).

[83] Neugeboren, Eric, Jun. 15, 2022, The Texas Tribune, *Biden Signs Order to Protect Transgender Children as Texas Continues Efforts to Restrict Gender-Affirming Care*, available at https://www.texastribune.org/2022/06/15/joe-biden-texas-transgender-care/ (last visited Mar. 7, 2023).

[84] Florida Department of Health, *Treatment of Gender Dysphoria for Children and Adolescents* Apr. 20, 2022, available at https://www.floridahealth.gov/_documents/newsroom/press-releases/2022/04/20220420-gender-dysphoria-guidance.pdf (last visited Mar. 3, 2023).

[85] Office of the Assistant Secretary for Health, Office of Population Affairs, *Gender-Affirming Care and Young People*, available at https://opa.hhs.gov/sites/default/files/2022-03/gender-affirming-care-young-people-march-2022.pdf (last visited Sept. 6, 2022).

BOM and BOOM Rule Making

On July 28, 2022, the DOH filed a *Petition to Initiate Rulemaking* to set standards of care for the treatment of gender dysphoria[86] with the Board of Medicine (BOM) for the care and treatment of minors with gender dysphoria, to preserve the health, safety, and welfare of the public under s. 20.43, F.S.

The DOH petition asserted it was necessary for the BOM to establish a standard of care for the treatment of gender dysphoria for children and adolescents because:

- The HHS had issued guidance encouraging early treatment for gender dysphoria with an array of services, including psychological, medical, and surgical interventions;
- The AACE and the AAP had issued similar guidance based on low-quality evidence plagued with small sample sizes and high risks of bias;
- The above endorsements had permeated both the general public and health care community and created the false impression that chemical and surgical intervention was not only clinically proven but was also the standard of care for treatment of gender dysphoria in Florida;
- The AHCA had conducted a study and issued a report[87] in June of 2022 to determine whether such procedures were consistent with generally-accepted professional medical standards, and had concluded that:
    - Available medical literature provided insufficient evidence that sex reassignment through medical interventions was a safe and effective treatment for gender dysphoria;
    - Puberty blockers were not approved by the FDA for the treatment of gender dysphoria, were not medically efficacious for the treatment of gender dysphoria, and had permanent side effects;
    - Hormonal treatments in adolescents can achieve their intended physical effects but reliable evidence regarding their psychological and cognitive impact was generally lacking;
    - Treatments can cause irreversible physical changes;
    - Surgical interventions for gender dysphoria included multiple procedures to alter the appearance of the body to resemble the individual's desired gender, were not reversible, and the long-term mental health effects of these procedures were largely unknown;
    - Due to the stark contrast regarding the efficacy of sex reassignment treatment, the confusion it has caused, and the lack of quality evidence regarding the effectiveness of such treatments, it was necessary for the BOM to provide preemptory guidance to the medical community to protect the health, safety, and welfare of Floridians.

The BOM considered the petition at its meeting on August 5, 2022, and voted to begin rulemaking proceedings through forming a joint committee with the BOOM. The boards received thousands of emails,[88] took testimony from board members, members of the public, and

[86] Florida Board of Medicine, Public Book 0805292022 FB2 p. 870, available upon request at the Florida Department of Health, Board of Medicine, 4052 Bald Cypress Way Bin C-03, Tallahassee, FL 32399-3253, 850-488-0595.
[87] Agency for Health Care Administration, *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 visited Mar. 9, 2023).
[88] Email from Paul A. Vazquez, J.D., Executive Director, Florida Board of Medicine, Florida department of Health, March 7, 2023 (on file with the Senate Committee on Health Policy).

stakeholders on multiple occasions regarding the language for the rule. The BOM ultimately adopted the following rule with an effective date of March 16, 2023.

> 64B8-9.019 Standards of Practice for the Treatment of Gender Dysphoria in Minors.
> (1) The following therapies and procedures performed for the treatment of gender dysphoria in minors are prohibited.
> (a) Sex reassignment surgeries, or any other surgical procedures, that alter primary or secondary sexual characteristics.
> (b) Puberty blocking, hormone, and hormone antagonist therapies.
> (2) Minors being treated with puberty blocking, hormone, or hormone antagonist therapies prior to the effective date of this rule may continue with such therapies.

A proposed BOOM rule is identical but is still in its rule making process.[89]

Florida Medicaid's Rule for General Medicaid Policy

One day after issuing its June 2022 report on "Generally Accepted Professional Medical Standards Determination on the Treatment of Gender Dysphoria," the AHCA issued a notice of development of rulemaking. On June 17, 2022, AHCA proposed an amendment to its General Medicaid Policy, Rule 59G-1.050, F.A.C., which was finalized and became effective on August 21, 2022.

The rule amendment provides that Florida Medicaid does not cover services for the treatment of gender dysphoria, including: puberty blockers, hormones, hormone antagonists, sex reassignment surgeries, or any other procedures that alter primary or secondary sexual characteristics. This amendment to the rule applies to all age groups.

Opponents of this change to the rule argue that it violates the sex discrimination protections provided under the equal protection clauses in the U.S. and Florida Constitutions and the federal code and rules relating to Medicaid by discriminating against people on the basis of their sex, gender status, and gender identity. A lawsuit[90] was filed on September 7, 2022, against AHCA in federal court, seeking a preliminary injunction to enjoin Florida Medicaid from applying the new rule. However, the injunction was denied in October 2022, so the rule is in effect, pending further action as the case progresses.

Nine other states (Arizona, Nebraska, Texas, Missouri, Arkansas, Kentucky, Ohio, Tennessee, and Georgia) exclude coverage of hormone therapy, top surgery, and bottom surgery in their state Medicaid programs, either in statute or in agency rule or policy. Seventeen states have not taken a position for their Medicaid programs. The other 24 states have differing policies, authorizing some level of Medicaid coverage for surgeries and/or hormone therapy. Of those states, some states offer full coverage of such services and others provide coverage for those above 15, 16, or 18 years of age.

---

[89] *Id.*
[90] *See* https://www.lambdalegal.org/sites/default/files/legal-docs/downloads/filed_complaint_against_ahca.pdf (last visited Mar. 10, 2023).

Other State Laws Prohibiting Sex Reassignment Treatments in Minors

Seven states, including Alabama, Arizona, Arkansas, Mississippi, Tennessee, Texas and Utah, recently enacted laws or policies restricting youth access to sex reassignment medical treatment in general and, in some cases, imposing penalties on adults facilitating access. Arkansas' 2021 law has been permanently enjoined,[91] but SB 199, entitled *Protecting Minors from Medical Malpractice Act of 2023*, currently is moving through the Arkansas legislature.[92] Alabama's law is also currently enjoined but that ruling is under appeal at the Federal 11th Circuit Court of Appeals and is awaiting the court's opinion.[93]

III. Effect of Proposed Changes:

Sections 1 through 5 of the bill amend Florida's Uniform Child Custody Jurisdiction and Enforcement Act to provide that:

- A court of this state has temporary emergency jurisdiction if the child is present in this state and is at risk of or is being subjected to the provision of sex-reassignment prescriptions or procedures as defined in s. 456.001, F.S.
- When making a determination about an inconvenient forum, a court must allow parties to submit information as to whether there is reason to believe that one of the parties is subjecting or is likely to subject the child to the provision of sex-reassignment prescriptions or procedures.
- A court of this state must treat as unjustifiable conduct subjecting or attempting to subject a child to the provision of sex-reassignment prescriptions or procedures and a court may not treat a parent′s removal of a child from another parent or from another state as unjustifiable conduct or child abuse if the removal was for the purpose of protecting the child from being subjected to sex-reassignment prescriptions or procedures and if there is reason to believe that the child was at risk of or was being so subjected.
- As used in s. 61.534, F.S., the term "serious physical harm" includes the provision of sex-reassignment prescriptions or procedures.
- A court of this state has jurisdiction to vacate, stay, or modify a child custody determination of a court of another state to protect the child from the risk of being subjected to the provision of sex-reassignment prescriptions or procedures and such court must vacate, stay,

[91] In 2021 Arkansas passed a law prohibiting sex reassignment treatment for minors, including puberty blockers, hormone therapy, and sex reassignment surgery. The law prohibited the use of insurance or public funds, including through Medicaid, for coverage of these services for minors.

[92] Arkansas SB 199 (2023), available at https://legiscan.com/AR/text/SB199/2023 (last visited Mar. 7, 2023).

[93] In April 2022, Alabama enacted a law that prevents transgender minors from receiving sex reassignment treatment, including puberty blockers, hormone therapy, and surgical intervention. The bill makes it a felony for any person to "engage in or cause" a transgender minor to receive any of these treatments, punishable by up to 10 years in prison or a fine up to $15,000. A lawsuit was filled challenging the law's constitutionality and the Federal District Court enjoined Alabama from enforcing part of the law criminalizing sex reassignment treatment for children; and Alabama appealed the injunction. *See* Holmes, Jacob; Alabama Political Reporter, Nov. 21, 2022, *State Appeals to Lift Injunction on Law Criminalizing Treatment of Transgender Youth*, available at https://www.alreporter.com/2022/11/21/state-appeals-to-lift-injunction-on-law-criminalizing-treatment-of-transgender-youth/ (last visited March 6, 2023). The 11th Circuit heard oral argument November 18, 2022, but no opinion has been issued as of March 13, 2023. *See Paul Eknes-Tucker v. Governor of the State of Alabama*, Oral Argument, available at https://www.courtlistener.com/audio/83873/paul-eknes-tucker-v-governor-of-the-state-of-alabama/ (last visited Mar. 6, 2023).

or modify the child custody determination to the extent necessary to protect the child from the provision of such prescriptions or procedures.

Section 6 of the bill creates s. 381.0027, F.S., to prohibit a state agency, the state group health insurance program, a local governmental entity, a managing entity as defined in s. 394.9082, or a managed care plan providing services under part IV of chapter 409 may not expend funds for sex-reassignment prescriptions or procedures as defined in s. 456.001, F.S.

Section 7 of the bill creates a new subsection (6) of s. 395.003, F.S., to provide that, by July 1, 2023, each licensed hospital or ASC must provide a signed attestation to the AHCA stating that the facility does not offer or provide sex-reassignment prescriptions or procedures, as defined in s. 456.001, F.S., to patients younger than 18 years of age, unless authorized under s. 456.52(1)(b), F.S., and does not refer such patients to other providers for such services. Beginning July 1, 2023, each licensed facility must provide the signed attestation to the AHCA upon initial licensure and as a requirement for each licensure renewal. Under the due process requirements provided in ch. 120, F.S., the AHCA must revoke the license of any licensed facility that fails to provide the required attestation.

Section 8 of the bill amends s. 456.001, F.S., to provide the following definitions:

- "Sex" means the classification of a person as either male or female based on the organization of the human body of such person for a specific reproductive role, as indicated by the person's sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present at birth.
- "Sex-reassignment prescriptions or procedures" means:
  - The prescription or administration of puberty blockers for the purpose of attempting to stop or delay normal puberty in order to affirm a person's perception of his or her sex if that perception is inconsistent with the person's sex as defined in subsection (8).
  - The prescription or administration of hormones or hormone antagonists to affirm a person's perception of his or her sex if that perception is inconsistent with the person's sex as defined in subsection (8).
  - Any medical procedure, including a surgical procedure, to affirm a person's perception of his or her sex if that perception is inconsistent with the person's sex as defined in subsection (8).
- "Sex-reassignment prescriptions or procedures" does not include:
  - Prescriptions or procedures for individuals born with a genetically or biochemically verifiable disorder of sex development (DSD), including, but not limited to, 46, XX DSD; 46, XY DSD; sex chromosome DSDs; XX or XY sex reversal; and ovotesticular disorder.
  - Prescriptions or procedures to treat an infection, an injury, a disease, or a disorder that has been caused or exacerbated by the performance of any sex-reassignment prescription or procedure, regardless of whether such prescription or procedure was performed in accordance with state or federal law or whether such prescription or procedure is covered by the private rights of action under ss. 766.102 and 768.042, F.S.
  - Prescriptions or procedures provided to a patient for the treatment of a physical disorder, physical injury, or physical illness that would, as certified by a physician licensed under ch. 458 or ch. 459, F.S., place the individual in imminent danger of death or impairment of a major bodily function without the prescription or procedure.

Section 9 of the bill creates s. 456.52, F.S., to provide that:

- Sex-reassignment prescriptions and procedures are prohibited for patients younger than 18 years of age, except that:
  - The BOM and the BOM must adopt emergency rules pertaining to standards of practice under which a patient younger than 18 years of age may continue to be treated with such prescription if such treatment for sex reassignment was commenced before, and is still active on, the effective date of the bill.
  - A patient meeting the criteria above may continue to be treated by a physician with such prescriptions according to rules adopted by the boards.
- If sex-reassignment prescriptions or procedures are prescribed for or administered or performed on patients 18 years of age or older, consent must be voluntary, informed, and in writing on forms approved by the department. Consent to sex-reassignment prescriptions or procedures is voluntary and informed only if the physician who is to prescribe or administer the pharmaceutical product or perform the procedure has, at a minimum, while physically present in the same room:
  - Informed the patient of the nature and risks of the prescription or procedure in order for the patient to make a prudent decision;
  - Provided the informed consent form, as approved by the DOH, to the patient; and
  - Received the patient's written acknowledgment, before the prescription or procedure is prescribed, administered, or performed, that the information required to be provided has been provided.
- Such consent does not apply to renewals of prescriptions relating to sex reassignment if a physician and his or her patient have met the requirements for consent for the initial prescription or renewal. However, separate consent is required for any new prescription for such a pharmaceutical product not previously prescribed to the patient.
- Sex-reassignment prescriptions or procedures may not be prescribed, administered, or performed except by a physician, defined as a physician licensed under ch. 458 or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the federal government.
- Violation of these provisions constitutes grounds for practitioner disciplinary action.
- Any person, other than the patient, who willfully or actively participates in a violation of the bill's provisions relating to providing treatment to a child commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.
- Any person, other than the patient, who violates the bill's requirements relating to consent or the prohibition against non-physicians providing such treatments commits a misdemeanor of the first degree, punishable as provided in ss. 775.082 or 775.083, F.S.

The DOH is directed to adopt emergency rules to implement Section 9 of the bill. Any emergency rules adopted under Section 9 are exempt from expiration that normally applies to emergency rules and will remain in effect until replaced by rules adopted under the nonemergency rulemaking procedures of the Administrative Procedure Act.

Section 10 of the bill amends s. 456.074, F.S., to provide that if a health care practitioner is arrested for the crime of proving treatments for sex reassignment to a child who does not qualify

for the exception specified in Section 9 of the bill, the practitioner is subject to an emergency order issued by the DOH to immediately suspend his or her license.

Sections 11 and 12 of the bill amend ss. 458.328 and 459.0138, F.S., respectively, to provide that, by July 1, 2023, each allopathic or osteopathic physician office registered for the performance of office surgeries must provide a signed attestation to the DOH stating that the office does not offer or provide sex-reassignment prescriptions or procedures to patients younger than 18 years of age, unless authorized under Section 9 of the bill, and does not refer such patients to other providers for such services. Beginning July 1, 2023, any office seeking registration must provide such signed attestation to the DOH. An office's failure to provide the signed attestation is grounds for denial of registration or the suspension or revocation of registration.

Section 13 of the bill provides that if any provision of the bill, once enacted, or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the bill, and those other provisions or applications can be given effect without the invalid provision or application, and to this end the provisions of the bill are severable.

Section 14 of the bill directs the Division of Law Revision to replace the phrase "the effective date of this act" wherever it occurs in the bill with the date the bill becomes a law.

Section 15 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will have a fiscal impact on hospitals, ASCs, or physician offices registered for office surgery that fail to provide the attestation required under sections 7, 11, and 12 of the bill. The bill may have an indeterminate fiscal impact on persons seeking sex reassignment treatment and health care practitioners or facilities who provide such treatment.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on entities specified under Section 6 of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 61.517, 61.520, 61.521, 61.534, 61.536, 381.0027, 395.003, 456.001, 456.52, 456.074, 458.328, and 459.0138.

This bill repeals the following sections of the Florida Statutes: 381.0027 and 456.52.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.