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# OHIO LEGISLATIVE SERVICE COMMISSION

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Office

**H.B. 513\***  
**133<sup>rd</sup> General Assembly**

## Occupational Regulation Report

[Click here for H.B. 513's Bill Analysis / Fiscal Note](#)

**Primary Sponsors:** Reps. Hood and Dean

**Impacted Professions:** Mental health professionals

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LSC is required by law to issue a report for each introduced bill that substantially changes or enacts an occupational regulation. The report must: (1) explain the bill's regulatory framework in the context of Ohio's statutory policy of using the least restrictive regulation necessary to protect consumers, (2) compare the regulatory schemes governing the same occupation in other states, and (3) examine the bill's potential impact on employment, consumer choice, market competition, and cost to government.<sup>1</sup>

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## SUMMARY OF PROPOSED REGULATIONS

### Prohibited procedures and activities

The bill prohibits physicians, physician assistants, advanced practice registered nurses, psychologists, licensed professional clinical counselors, licensed professional counselors, independent social workers, social workers, social work assistants, independent marriage and family therapists, and marriage and family therapists ("mental health professionals") from engaging in certain procedures and activities for the purpose of changing, reinforcing, or affirming a minor's (1) perception of the minor's own sexual attraction or sexual behaviors, or (2) gender identity when that identity is inconsistent with the minor's biological sex. The [LSC bill analysis](#) includes a full list of the prohibited procedures and activities. The prohibitions do not

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\* This report addresses the "As Introduced" version of H.B. 513. It does not account for changes that may have been adopted after the bill's introduction.

<sup>1</sup> R.C. 103.26, not in the bill.

apply if the minor has a medically-verifiable genetic disorder of sex development or abnormal sex chromosome structure that has been diagnosed by a physician following genetic testing.<sup>2</sup>

### **Civil and criminal penalties**

A client or patient who is harmed by a mental health professional performing one or more of the prohibited procedures or activities may file a civil action against the mental health professional not later than 20 years after the date the violation is discovered. The bill also prescribes criminal penalties for mental health professionals that purposefully engage in the prohibited procedures or activities.<sup>3</sup>

### **Notice to licensing board**

If a mental health professional or applicant for licensure as a mental health professional is indicted for, or charged with an alleged violation of one of the prohibitions, the prosecuting attorney handling the case must send written notice to the regulatory or licensing board or agency, if any, that has the authority to suspend or revoke the professional's license, certification, registration, or authorization. If a mental health professional is convicted of or pleads guilty to a violation of the bill's prohibitions, the court must transmit a certified copy of the judgment entry of conviction to that board of agency.<sup>4</sup>

### **Sexuality or identity counseling**

The bill prohibits a government entity, including the Department of Mental Health and Addiction Services or an occupational licensing board, from prohibiting (1) a mental health professional from providing sexuality or identity counseling or (2) a parent, guardian, or custodian of a minor from consenting to or withholding consent to sexuality or identity counseling for that minor.<sup>5</sup> It appears, based on the plain meaning of "government entity," that the bill prohibits local governments, as well as state agencies, from imposing such regulations.

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## **LEAST RESTRICTIVE REGULATION COMPARISON**

### **Ohio's general regulatory policy**

The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect consumers from "present, significant, and substantiated harms that threaten health, safety, or welfare," the state's expressed intent is to enact the "least restrictive regulation that will adequately protect consumers from such harms."<sup>6</sup>

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<sup>2</sup> R.C. 5128.03.

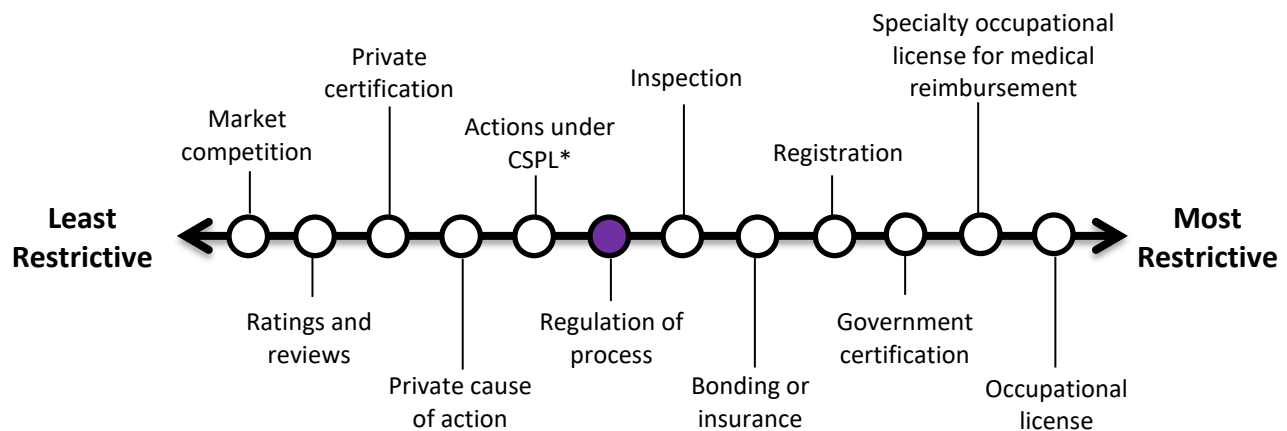
<sup>3</sup> R.C. 5128.03(D) and 5128.99.

<sup>4</sup> R.C. 5128.04 and 5128.06.

<sup>5</sup> R.C. 5128.02.

<sup>6</sup> R.C. 4798.01 and 4798.02, neither in the bill.

The degree of “restrictiveness” of an occupational regulation is prescribed by statute. The following graphic identifies each type of occupational regulation expressly mentioned in the state’s policy by least to most restrictive:



\*CSPL – The Consumer Sales Practices Law

By prohibiting forms of treatment for minor patients, H.B. 513 creates a new regulation of process for health care professionals. Conversely, the bill shields mental health professionals from new and existing government regulations that prohibit sexuality or identity counseling.

## Necessity of regulations

At the time this report was completed, H.B. 513 had not yet received a first hearing in the House Health Committee. Therefore, the bill’s sponsors, Representative Hood and Representative Dean, had not yet provided a direct statement as to their intent in proposing the regulations. Generally, it appears that the bill would decrease the likelihood of a minor patient receiving certain treatments related to gender or sexuality from a mental health professional.

## Restrictiveness of regulations

The state’s policy does not provide specific guidance as to when a regulation of process is the best means of protecting the health, safety, and welfare of consumers. However, the policy as a whole suggests that regulations of process are the most preferred method of regulation when market competition, ratings and reviews, private certifications, private causes of action, and actions under the state’s Consumer Sales Practices Law (CSPL) do not provide sufficient protection.

Private remedies for a minor who alleges physical or mental distress as a result of a mental health procedure are limited. The most obvious recourse is to seek damages through a malpractice lawsuit against the mental health professional who administered the treatment. The outcome of malpractice cases depends on the specific facts and circumstances involved

but, generally, the plaintiff must demonstrate that the professional failed to act with “ordinary skill, care, and diligence.”<sup>7</sup>

Some private medical organizations, like the American Medical Association and the American Academy of Pediatrics, proffer guidance and recommendations on the procedures and activities addressed in the bill. However, there is not universal agreement among mental health professionals as to their effectiveness or advisability. Therefore, it can be difficult for a court to determine if a practitioner exercised a sufficient degree of care in choosing and administering a particular form of treatment. The bill resolves much of the ambiguity associated with this analysis by providing clear-cut rules as to which treatments and activities are permissible, and which are not. On the other hand, by establishing clear rules, the bill inhibits the flexibility of mental health professionals and their patients in choosing what they think is the best form of treatment.

The practicality of the malpractice remedy is further complicated by the time limit for bringing medical malpractice actions. Continuing law generally requires that such actions be commenced within one year of the event that caused damages. There are exceptions to the rule; for example, the time limit does not begin tolling until a minor plaintiff reaches the age of adulthood and it may be extended for up to an additional three years if the injury is not discovered immediately.<sup>8</sup> Nonetheless, a malpractice action is not a suitable remedy for injuries that manifest themselves later in life. The bill addresses the timing issue by allowing a civil action up to 20 years after the plaintiff discovers that a prohibited procedure or activity was administered.

Medical malpractice actions are reactionary in nature – they reimburse plaintiffs for harm that has already occurred. The process regulations in H.B. 513 also apply prospectively – they prohibit conduct that has yet to occur. If the goal is to shield all minors from the prohibited procedures and activities, a prospective regulation is a more direct way to achieve it.

## **Other regulatory policies**

H.B. 513 modifies established regulatory frameworks that apply to mental health professionals who practice in Ohio. The law does not contain a general statement explaining the state’s intent in regulating these particular professions.<sup>9</sup>

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# **IMPACT STATEMENT**

## **Opportunities for employment**

The bill may reduce the number of services or counseling sessions conducted, which could impact employment opportunities for mental health professionals, particularly those that specialize in gender identity and sexual orientation for the youth population. If employment

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<sup>7</sup> See, *Ault v. Hall*, 119 Ohio St. 422, 428 (1928).

<sup>8</sup> R.C. 2305.113 and 2305.16, neither in the bill.

<sup>9</sup> See, R.C. chapters 4723, 4730, 4731, 4732, and 4757.

opportunities decreased, it is possible that individuals may choose not to enter the field. Additionally, if professionals currently practicing are impacted, it is possible that they may choose to specialize or cater to other groups or decide to leave the profession altogether. Any impact will depend on the number of minors currently receiving or seeking the procedures and activities prohibited by the bill. The majority of any impacts will likely be concentrated on those professionals that specialize in providing services to minors.

## **Consumer choice and cost**

This bill applies only to procedures and activities conducted on minor patients. Therefore, it will limit consumer choice for this population. As a result, there may be a reduction in demand, which could put a downward pressure on prices. Any impact will depend on the number of minors currently receiving or seeking these services.

## **Market competition**

This bill will impact the number of mental health services and procedures conducted on minors. Since this will apply equally to all mental health professionals that provide these services to this population, it is not believed that market competition will be impacted significantly. However, those professionals that specialize or cater to minors will be more impacted than those that do not. Thus, it is possible that these professionals may choose to specialize in a broader population. If this occurs, then there will be greater market competition for these services.

## **Cost to government**

The health professionals specifically enumerated in the bill include individuals licensed by the following: the State Medical Board of Ohio, the Ohio Board of Nursing, the State Board of Psychology, and the Ohio Counselor, Social Worker and Marriage and Family Therapist Board. As a result, it is possible that these boards could realize an increase in administrative costs to investigate any complaints or to address consumer or licensee questions. The amount will depend on the number and scope of complaints or questions. In addition, if any state or local government programs currently pay for any services or pharmaceuticals prohibited under the bill, this could result in a decrease in utilization. If this occurs, there could be a corresponding decrease in program costs.

The bill's criminal penalties may result in local court costs, as well as state and local incarceration costs. Fine revenues could also be collected if levied. Lastly, the bill's requirement that anyone who knows or suspects a minor has been subjected to one of these procedures to report this knowledge to a public children services agency or a peace officer could increase costs for these local entities. The cost would depend on the number of reports received. Any impacts from these provisions would depend on the number of violations and reports.

## STATE-BY-STATE COMPARISON

It does not appear that any states have enacted legislation similar to H.B. 513. At least ten states have considered bills this year that would restrict gender transition-related procedures and activities for minors.<sup>10</sup> South Dakota was the first state to introduce legislation entitled the “Vulnerable Child Protection Act.” A sample of legislation from neighboring states and a few others is below.

Legislation – Minors’ Access to Gender Transition Procedures					
State	Prohibition on certain procedures or activities	Applicable professions	Exemptions	Penalties	Status/other information
<b>South Dakota</b> (H.B. 1057 of the 95 <sup>th</sup> Legislative Session) Text: <a href="https://mylrc.sdlegislature.gov/api/Documents/63149.pdf">https://mylrc.sdlegislature.gov/api/Documents/63149.pdf</a>	Generally prohibits a medical professional from engaging in the same procedures and activities that are prohibited by H.B. 513, but excludes lobotomies and does not apply the prohibition to individuals ages 16 and 17. Excludes a private right to sue.	Physicians, surgeons, physician assistants, clinical nurse specialists, or practitioners.	Same as H.B. 513 (exempts performing procedures and activities on a minor with (1) a medically verifiable genetic disorder of sex development or (2) abnormal sex chromosome structure).	No provision.	Postponed.

<sup>10</sup> Kristin Lam, USA TODAY, *National Firestorm on Horizon as States Consider Criminalizing Transgender Treatments for Youth*, available at <https://www.usatoday.com/story/news/nation/2020/02/06/transgender-youth-transition-treatment-state-bills/4605054002/>. In addition to the states listed in the article, Georgia is also considering legislation on this topic (H.B. 1060 of the 2019-2020 Regular Session).

Legislation – Minors’ Access to Gender Transition Procedures					
State	Prohibition on certain procedures or activities	Applicable professions	Exemptions	Penalties	Status/other information
<p><b>Colorado</b></p> <p>(H.B. 20 of the 72<sup>nd</sup> General Assembly, Second Regular Session)</p> <p>Text: <a href="https://leg.colorado.gov/sites/default/files/documents/2020A/bills/2020a_1114_01.pdf">https://leg.colorado.gov/sites/default/files/documents/2020A/bills/2020a_1114_01.pdf</a></p>	<p>Generally, prohibits a health care professional from engaging in the same procedures and activities on minors that are prohibited by H.B. 513.</p> <p>Excludes a private right to sue.</p>	<p>Dentists, physicians, physician assistants, advanced practice registered nurses with prescriptive authority, optometrists, or podiatrists.</p>	<p>Exempts only a health care professional who administers, dispenses, or prescribes a drug or hormone or orders or performs a surgical procedure for the purpose of treating a minor who has a physical disorder of sex development.</p>	<p>Same as H.B. 513 (the medical professional is subject to a criminal penalty and professional disciplinary action).</p>	<p>Postponed indefinitely.</p>
<p><b>Oklahoma</b></p> <p>(S.B. 1819 of the 57<sup>th</sup> Legislature, Second Session)</p> <p>Text: <a href="http://webserver1.lsb.state.ok.us/cf_pdf/2019-20%20INT/SB/SB1819%20INT.PDF">http://webserver1.lsb.state.ok.us/cf_pdf/2019-20%20INT/SB/SB1819%20INT.PDF</a></p>	<p>Prohibits a health care professional from intentionally performing gender reassignment medical treatment on minors.</p> <p>Excludes a private right to sue.</p>	<p>Physicians, psychologists, dentists, osteopathic physicians, podiatrists, chiropractors, registered or licensed practical nurses, and physician assistants.</p>	<p>No exemptions.</p>	<p>The health care professional is subject only to professional disciplinary action.</p>	<p>Pending in the S. Health and Human Services Committee.</p>

Legislation – Minors’ Access to Gender Transition Procedures					
State	Prohibition on certain procedures or activities	Applicable professions	Exemptions	Penalties	Status/other information
<p><b>Missouri</b> (H.B. 2051 of the 100<sup>th</sup> General Assembly) Text: <a href="https://www.house.mo.gov/billtracking/bills201/hlrbillspdf/3811H.011.pdf">https://www.house.mo.gov/billtracking/bills201/hlrbillspdf/3811H.011.pdf</a></p>	<p>Specifies that a person commits the offense of abuse or neglect of a child if the person knowingly assists, coerces, or provides for a minor to undergo any surgical or hormonal treatment for the purpose of gender reassignment.</p> <p>Excludes a private right to sue.</p>	Any person.	No exemptions.	The offender is subject to a criminal penalty. If the offender is a health care professional, the offender also may be subject to professional disciplinary action.	Pending in the H. Judiciary Committee.
<p><b>Illinois</b> (H.B. 3515 of the 101<sup>st</sup> General Assembly) Text: <a href="https://bit.ly/3gdIN2l">https://bit.ly/3gdIN2l</a></p>	<p>Generally, prohibits a medical doctor or mental health provider from engaging in the same procedures and activities on minors that are prohibited by H.B. 513.</p> <p>Excludes a private right to sue.</p>	Doctors and mental health providers.	No exemptions.	The medical doctor or mental health provider is subject only to professional disciplinary action.	Pending in the H. Rules Committee.



Legislation – Minors’ Access to Gender Transition Procedures					
State	Prohibition on certain procedures or activities	Applicable professions	Exemptions	Penalties	Status/other information
<b>West Virginia</b> (H.B. 4609 of the 2020 Regular Session) Text: <a href="https://bit.ly/3ggNY0I">https://bit.ly/3ggNY0I</a>	Requires a health care provider to deny a minor’s request for gender reassignment surgery or hormone replacement therapy and prohibits the parent of the minor from substituting their consent for the minor to have the surgery or therapy.  Excludes a private right to sue.	Health care providers.	No exemptions.	No penalties.	Pending in the H. Judiciary Committee.
<b>Kentucky</b> (H.B. 321 of the 2020 Regular Session) Text: <a href="https://apps.legislature.ky.gov/recorddocuments/bill/20RS/hb321/orig_bill.pdf">https://apps.legislature.ky.gov/recorddocuments/bill/20RS/hb321/orig_bill.pdf</a>	Generally, prohibits a medical professional from engaging in the same procedures and activities that are prohibited by H.B. 513.  Authorizes a private right to sue like H.B. 513.	Medical professionals.	Same as H.B. 513.	Same as H.B. 513 (the medical professional is subject to a criminal penalty and professional disciplinary action).	Pending in the H. Health and Family Services Committee.