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Bill Analysis

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Emma Carroll, Research Analyst

SUMMARY

- Prohibits a physician from knowingly performing gender reassignment surgery on a minor.
- Prohibits a physician from knowingly prescribing a cross-sex hormone or puberty-blocking drug to a minor for the purpose of assisting with gender transition.
- Prohibits a physician from aiding or abetting those prohibited practices.
- Prohibits a mental health professional from diagnosing or treating a minor for a gender-related condition without first obtaining parental consent and screening for other comorbidities, abuse, and traumas.
- Requires each mental health professional who diagnoses or treats a minor for a gender-related condition to annually report certain information to the Ohio Department of Health (ODH).
- Establishes penalties for physicians and mental health professionals who engage in conduct the bill prohibits.
- Prohibits Medicaid coverage of gender transition services for minors.
- Prohibits a political subdivision from banning the use of models of care that assist a minor experiencing a gender-related condition in reconciling their gender identity with their biological sex.
- Prohibits a court from considering certain parental decisions regarding their child's gender identity and gender transition when allocating parental rights and responsibilities or parenting time.
- Expresses the General Assembly's findings regarding gender transition services, particularly for minors.

DETAILED ANALYSIS

Prohibition on certain gender transition services for minors

The bill regulates the provision of gender transition services to minors by addressing several facets of gender transition – defined by the bill as the process in which an individual goes from identifying with and living as a gender that corresponds to his or her biological sex to identifying with and living as a gender different from his or her biological sex, including social, legal, or physical changes.

The bill prohibits physicians from knowingly doing any of the following:¹

- Performing genital or nongenital reassignment surgery on a minor;
- Prescribing a cross-sex hormone or puberty-blocking drug for a minor for the purpose of assisting the minor with gender transition; and
- Engaging in conduct that aids or abets the performance of gender reassignment surgery on a minor or the prescription of a cross-sex hormone or puberty-blocking drug for a minor for the purpose of gender transition, provided that this prohibition may not be construed to impose liability on any protected speech.

Permissible medical treatment

The bill specifies that it does not prohibit a physician from treating, including by performing surgery on or prescribing drugs or hormones for, a minor in the following circumstances:²

- The minor was born with a medically verifiable disorder of sex development, including ambiguous external biological sex characteristics;
- The minor was diagnosed with a chromosomal or hormonal disorder of sexual development, which a physician has determined through genetic or biochemical testing; or
- The minor needs treatment for a complication of a previous gender transition service.

Mental health care

The bill prohibits mental health professionals from diagnosing or treating a minor for a gender-related condition without first obtaining the consent of the minor's residential parent and legal custodian or the minor's guardian. A gender-related condition is any condition where

¹ R.C. 3129.02.

² R.C. 3129.04.

an individual feels an incongruence between the individual's gender identity and biological sex, including gender dysmorphia.³

Additionally, before diagnosis or treatment, the mental health professional must screen the minor for comorbidities that may be influencing the minor's gender-related condition (including depression, anxiety, attention deficit hyperactivity disorder, autism spectrum disorder, and other mental health conditions) and for physical, sexual, mental, and emotional abuse and other traumas.⁴ Mental health professionals include psychiatric-mental health clinical nurse specialists, psychiatric-mental health nurse practitioners, psychiatrists, psychologists, school psychologists, social workers, professional counselors, and marriage and family therapists.⁵

The bill bans political subdivisions from prohibiting the use of watchful waiting, treatment and therapies similar to those provided for the treatment of body dysmorphia and eating disorders, or other models of care that attempt to help a minor reconcile their gender identity with their biological sex.⁶ The Ohio Constitution grants municipal corporations certain authority, including authority to exercise local self-government and police powers that do not conflict with general laws.⁷ A state statute that purports only to grant or limit the legislative authority of municipal corporations is not considered a general law.⁸ Because "home rule" originates in the Constitution, laws passed by the General Assembly that interfere with it may be invalid as applied to municipal corporations. The Ohio Supreme Court has upheld preemptive language regarding firearms, but disallowed language attempting to preempt local towing regulations.⁹ Ultimately, if challenged, it would be up to a court to determine the validity of this provision.

Reporting

The bill requires each mental health professional who diagnoses or treats a minor for a gender-related condition to annually report to ODH by March 1 all of the following information regarding minors diagnosed or treated for a gender-related condition:

- The number of minors diagnosed or treated in the previous year;
- The biological sex of the minors diagnosed or treated in the previous year;
- The age at which the minor's diagnosis or treatment began;

³ R.C. 3129.01(E).

⁴ R.C. 3129.03(A).

⁵ R.C. 3129.01(J).

⁶ R.C. 3129.03(B).

⁷ Ohio Constitution, Article XVIII, Section 3.

⁸ *Canton v. State*, 95 Ohio St.3d. 149 (2002).

⁹ *Cleveland v. State*, 128 Ohio St.3d 135 (2010); *Cleveland v. State*, 138 Ohio St.3d 232 (2014).

- The number of minors who also presented with mental health comorbidities or histories of abuse or trauma;
- The number of minors who resumed identification with their biological sex;
- The number of minors who have not been treated for six months or more and who were not included in a previous report; and
- Any other information ODH requires by rule.

This information must be organized by month, when appropriate, and may not include information that identifies or tends to identify a specific individual.

ODH is required to submit a report to the General Assembly that compiles the information reported by mental health professionals by June 1 of each year. The ODH Director may adopt rules regarding the reporting process.¹⁰

Enforcement

Any physician who engages in the conduct the bill prohibits is subject to discipline by the State Medical Board for unprofessional conduct. Similarly, any mental health professional who diagnoses or treats a minor for a gender-related condition in violation of the bill, or who fails to submit an annual report to ODH, is engaging in unprofessional conduct and is subject to discipline by the appropriate licensing board.¹¹

An individual may bring a claim for a violation of the bill's provisions within two years of the date the cause of action accrues. A minor may bring an action through a parent or guardian, or, upon turning 18, may do so independently within 20 years.¹²

Ohio's Attorney General may bring an action to enforce compliance with the bill's prohibitions concerning physicians and mental health professionals. The Attorney General, the state, and any state agency, officer, or employee may act as currently authorized to file or intervene in any proceeding.¹³

Medicaid

The bill prohibits Medicaid from covering gender transition services for minors; however, the exclusion does not include mental health services provided for a minor's gender-related condition, any services that are not gender transition services, or any services described in "**Permissible medical treatment**" above.¹⁴

¹⁰ R.C. 3129.06.

¹¹ R.C. 3129.05(A).

¹² R.C. 3129.05(B).

¹³ R.C. 3129.05(C).

¹⁴ R.C. 3129.07(D).

The bill defines “gender transition services” to mean:¹⁵

- Any medical or surgical service (including physician services, inpatient and outpatient hospital services, or prescription drugs or hormones);
- Provided for the purpose of assisting an individual with gender transition; and
- That seeks to alter or remove physical or anatomical characteristics or features that are typical for the individual’s biological sex, or to instill or create physiological or anatomical characteristics that resemble a sex different from the individual’s birth sex, including medical services that provide puberty-blocking drugs, cross-sex hormones, or other mechanisms to promote the development of feminizing or masculinizing features in the opposite sex, or genital or nongenital gender reassignment surgery.

Parental rights and responsibilities

The bill prohibits a judge, when allocating parental rights and responsibilities or parenting time, from considering a parent’s decision to refer to and raise their child in a manner consistent with the child’s biological sex, to decline to consent to their child receiving gender transition services, or to decline to consent to their child receiving mental health services that affirm the child’s self-perception as transgender.¹⁶

Legislative findings

The General Assembly makes the following findings:¹⁷

- This state has a compelling interest in protecting the health and safety of its citizens, especially vulnerable children.
- Only a tiny percentage of the American population experiences distress at identifying with their biological sex. According to the American Psychiatric Association, prevalence ranges from 0.005% to 0.014% for natal adult males and from 0.002% to 0.003% for natal females.
- Studies consistently demonstrate that the vast majority of children who are gender nonconforming or experience distress at identifying with their biological sex come to identify with their biological sex in adolescence or adulthood, thereby rendering most medical health care interventions unnecessary.
- Scientific studies show that individuals struggling with distress at identifying with their biological sex often have already experienced psychopathology, which indicates these individuals should be encouraged to seek mental health care services before undertaking any hormonal or surgical intervention.

¹⁵ R.C. 3129.01(G).

¹⁶ R.C. 3109.054.

¹⁷ Section 2.

- Suicide rates, psychiatric morbidities, and mortality rates remain markedly elevated above the background population after inpatient gender reassignment procedures have been performed.
- Some health care providers are prescribing puberty-blocking drugs in order to delay the onset or progression of puberty in children who experience distress at identifying with their biological sex. This is being done despite the lack of any long-term longitudinal studies evaluating the risks and benefits of using these drugs for the treatment of such distress or gender transition.
- Health care providers are also prescribing cross-sex hormones for children who experience distress at identifying with their biological sex, despite the fact that no randomized clinical trials have been conducted on the efficacy or safety of the use of cross-sex hormones in adults or children for the purpose of treating such distress or gender transition.
- The use of cross-sex hormones comes with the following serious known risks:
 - For biological females, erythrocytosis (a condition where the body makes too many red blood cells), severe liver dysfunction, coronary artery disease, cerebrovascular disease (a group of conditions that affect blood flow in the brain), hypertension (high blood pressure), increased risk of breast and uterine cancers, and irreversible infertility;
 - For biological males, thromboembolic disease (a group of conditions where blood clots form in a vein, and then dislodge and travel in the blood), cholelithiasis (gallstones), coronary artery disease, macroprolactinoma (pituitary gland tumor), cerebrovascular disease, hypertriglyceridemia (an abnormal concentration of triglycerides in the blood), breast cancer, and irreversible infertility.
- Genital and nongenital reassignment surgeries are generally not recommended for children, although evidence indicates referrals for children to have such surgeries are becoming more frequent.
- Genital gender reassignment surgery includes several irreversible invasive procedures for males and females and involves the following alterations of biologically normal and functional body parts:
 - For biological females, surgery may involve a hysterectomy (removal of the uterus) or oophorectomy (removal of one or both ovaries), reconstruction of the urethra, genital reconstruction including metoidioplasty (surgical creation of a penis using existing genital tissue) or phalloplasty (construction of a penis), vaginectomy (removal of a vagina), scrotoplasty (construction of a scrotum), and implantation of erection or testicular prostheses;
 - For biological males, surgery may involve genital reconstruction including penectomy (removal of the penis), orchiectomy (removal of one or both testicles), vaginoplasty (construction of a vagina), clitoroplasty (construction of a clitoris), and vulvoplasty (creation of a vulva).

- The complications, risks, and long-term care concerns associated with genital gender reassignment surgery for both males and females are numerous and complex.
- Nongenital gender reassignment surgery includes various invasive procedures for males and females and also involves the alteration or removal of biologically normal and functional body parts:
 - For biological females, procedures may include subcutaneous mastectomy (removal of the entire breast except for nipple and areola), voice surgery, liposuction, lipofilling (transfer or grafting of fat), pectoral implants, and other aesthetic procedures;
 - For biological males, procedures may include augmentation mammoplasty (breast implants or fat transfer), facial feminization surgery (including various bony and soft tissue procedures), liposuction, lipofilling, voice surgery, thyroid cartilage reduction (reduction of Adam’s apple), gluteal augmentation (buttock implants or fat transfer), hair reconstruction, and other aesthetic procedures.
- It is an accepted principle of economics and public policy that when a service or product is subsidized or paid for, demand for that service or product increases. Just between 2015 and 2016, gender reassignment surgeries increased by 20%.
- It is of grave concern to the General Assembly that the medical community is allowing individuals who experience distress at identifying with their biological sex to be subjects of irreversible and drastic nongenital gender reassignment surgery and irreversible, permanently sterilizing genital gender reassignment surgery, despite the lack of studies showing that the benefits of such extreme interventions outweigh the risks.
- The risks of gender transition procedures far outweigh any benefit at this stage of clinical study on these procedures.

Delayed effective date

The bill’s provisions take effect six months after it becomes effective.¹⁸

Designation

The act is designated as the “Ohio Saving Adolescents from Experimentation (SAFE) Act.”¹⁹

¹⁸ Section 3.

¹⁹ Section 4.

HISTORY

Action	Date
Introduced	02-27-23
