



October 17, 2023

Hon. Rob Bonta
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed the proposed measure (A.G. File No. 23-0020, Amendment #1) related to certain gender-affirming medical procedures for individuals under the age of 18 years.

Background

Some Children Are Transgender. Sex generally refers to a person being biologically male, female, or intersex. The attitudes, feelings, and behaviors that a given culture associates with these biological designations are generally known as gender. Gender identity generally refers to an individual's internal sense of being male, female, or something else. For example, transgender individuals have gender identities that differ from the sex assigned to them at birth.

Transgender Children Are a Small Share of California's Population. Data on transgender individuals are limited. That said, research suggests that transgender individuals comprise a small share of children. For example, one recent study by the Williams Institute at the University of California, Los Angeles estimates that nearly 50,000 individuals (around 2 percent) of individuals between the age of 13 to 17 years identify as transgender in California.

Some Transgender Children Receive Health Care Services to Affirm Their Gender Identity. Some transgender individuals experience distress from having a gender identity that is different from their sex assigned to them at birth. Transgender individuals experiencing distress can receive certain health care services, including mental health services and medical treatments. These treatments can be a part of what is referred to as "gender affirming care." Medical treatments can include prescription drugs to postpone the development of puberty (known as "puberty blockers"), hormone therapies, and surgeries. For transgender children, decisions


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around which treatment to provide and when to provide the treatment are made jointly by the physician and parent of the child, generally following professionally recognized standards.

California Law Protects Access to Gender-Affirming Care. A number of laws in California protect access to gender-affirming care for transgender individuals. For example, California law prohibits health insurance plans from discriminating against transgender patients, including by denying patients access to gender-affirming treatments when the treatments are medically necessary.

California Helps Pay for Health Care for Many Individuals, Including Gender Affirming Care. State and local governments help certain Californians pay for health care through a number of different programs. For example, Medicaid, known as “Medi-Cal” in California, provides health coverage to eligible low-income California residents. It is funded from a mix of federal, state, and local funds. Health care services covered by Medi-Cal include gender affirming care for transgender individuals, generally when considered to be medically necessary.

California Licenses Health Care Providers. California law requires health insurance plans, health care providers, and health care facilities to be licensed to provide health care services. Several departments are responsible for licensing health care entities in California. For example, the Department of Consumer Affairs includes numerous licensing boards that license health care providers, such as physicians, nurses, and pharmacists, among others. These departments and boards generally cover the cost to license providers and investigate complaints by charging affected providers fees and fines.

Proposal

Prohibits Providing Certain Medical Treatments That Affirm a Different Gender Than Biological Sex for Youth. The measure would prohibit health care providers (such as a physician or a nurse) from providing patients under the age of 18 certain medical treatments that affirm a gender identity different than the patient’s biological sex. The initiative specifically would prohibit prescribing or administering puberty blockers, hormones or hormone antagonists, and surgery or medical procedures. The measure defines biological sex as either male or female, based on specified physiological and genetic attributes.

Excludes Three Kinds of Services From Prohibitions. The measure would exclude from these prohibitions the following: (1) services medically necessary to treat a minor born with a medically verifiable genetic disorder of sexual development; (2) services to return a child who previously received gender-affirming procedures back to his or her biological sex; and (3) services to children who began gender-affirming procedures prior to when the measure becomes law or January 1, 2025, whichever is earlier.

Enacts Consequences to Providers for Providing Services. Except for the exclusions described in the previous paragraph, providing a prohibited medical service under the measure would be considered unprofessional conduct and subject to discipline and a hearing process by the provider’s licensing entity. The measure specifies that such discipline would include revoking of the health care provider’s license or certification.

Fiscal Effect

Impact Depends on Court Rulings Related to Gender-Affirming Health Care. In recent years, several states have enacted prohibitions on health care providers from providing certain gender-affirming medical treatments, including treatments that would be prohibited under this measure. Many of these laws are being litigated in the federal court system to determine whether they conflict with the United States Constitution. At the time of this analysis, the courts have allowed bans in some states to take effect, while bans in other states have not been allowed to go into effect. If a court were to rule this measure could not go into effect, it would have no fiscal effect. Alternatively, were the measure to withstand legal challenges, there would be fiscal effects, described below.

If Measure Becomes Law, Possible Minor Savings From No Longer Covering Prohibited Treatments... Were the measure to become law, state and local government health programs that pay for gender-affirming puberty blockers, hormone therapies, and surgeries for youth could no longer do so. Although comprehensive data on state and local government spending for these services is not available, it could be as much as in the millions of dollars annually. This represents a very small share of overall state and local spending, with the state General Fund providing \$37.5 billion to Medi-Cal in 2023-24, for example.

...Could Be Impacted by Other Long-Term Effects. The savings from no longer paying for health care services could be increased, reduced, or even offset by other health-related impacts. For example, some Medi-Cal enrollees under the age of 18 who otherwise would have received prohibited services may choose to receive some of these services when they are adults. In these cases, some of the spending associated with prohibited services would still occur, but at a later time for the individual. In other cases, individuals who are eligible for Medi-Cal as children may earn too much income to qualify for Medi-Cal as adults or forgo these services altogether. These effects are difficult to project. Also adding to the fiscal uncertainty, the long-term effects on mental and physical health of providing gender-affirming care to transgender youth are actively being studied. Depending on these long-term impacts, prohibiting certain gender-affirming medical treatments on individuals under the age of 18 could affect the use of health care services, with corresponding fiscal impacts

Potential, but Unknown, Cost Pressure Related to Federal Anti-Discrimination Laws. Federal law prohibits health care providers that receive federal funding for health programs (such as Medicaid) from discriminating against patients on the basis of race, sex, and other factors. Federal courts currently are assessing whether these nondiscrimination provisions extend to gender identity and the provision of gender-affirming care. Depending on the decisions in these court cases and any resulting federal actions, California providers could face a number of potential consequences, including revoked federal funding. Such actions also could place pressure on state and local governments to backfill lost federal funding. Whether action is taken and the magnitude of such action is unknown, but the impact could be significant.

Summary of Fiscal Effects. We estimate the measure would have the following fiscal effects:

- To the extent the measure can be legally implemented, potentially relatively minor savings up to the millions of dollars annually from no longer paying for prohibited services for individuals under the age of 18. These savings could be affected by many other impacts, such as individuals seeking treatment later in life.
- Potential, but unknown, cost pressure to state and local governments related to federal fiscal penalties if the measure results in providers being deemed out of compliance with federal law.

Sincerely,

for Gabriel Petek
Legislative Analyst

for Joe Stephenshaw
Director of Finance