

LD 535 Draft to Replace Concept Bill

An Act to Increase Access to Necessary Medical Care for Certain Minors

1. Definitions

- A. "Gender-Affirming Hormone Therapy" means non-surgical, medically necessary health care that respects the gender identity of the patient, as experienced and defined by the patient, including, but not limited to, the following:
 - 1) interventions to suppress the development of endogenous secondary sex characteristics;
 - 2) interventions to align the patient's appearance or physical body with the patient's gender identity; and
 - 3) interventions to alleviate symptoms of clinically significant distress resulting from gender dysphoria.
- B. "Gender dysphoria" is a concept and clinical diagnosis designated in the Diagnostic and Statistical Manual of Mental Disorders, 8th edition or its successor (DSM-5) and in WPATH Standards of Care, 8th edition or its successor (WPATH) as clinically significant psychological distress or impairment that results from an incongruence between one's sex assigned at birth and one's gender identity.
- C. "Health Care Professional" means the provider of gender-affirming hormone therapy, qualified by training and experience to prescribe and monitor care, who is:
 - (1) A medical doctor licensed, including but not limited to an endocrinologist, psychiatrist, pediatrician, internal medicine or family practice doctor, by the Board of Licensure in Medicine, Title 32, chapter 48;
 - (2) An osteopathic physician, as licensed by Title 32, chapter 36;
 - (3) An advanced practice registered nurse, clinical nurse specialist, registered professional nurse, or certified nurse practitioner licensed by the Board of Licensure in Nursing, Medicine, Title 32, chapter 31.
- D. "Minor" means a person who is at least 16 years of age but less than 18 years of age.

2. Authorization for Care

- A. A health care professional may provide gender-affirming hormone therapy to a minor when the minor and parent or parents or guardian who possess parental rights and responsibilities concerning medical decision making consent for this medical care; or when:
 - (1) The minor is in conflict with a parent or parents or guardian who possess parental rights and responsibilities concerning medical decision making but withhold consent for this medical care;
 - (2) The minor has been diagnosed with gender dysphoria;

- (3) The minor is experiencing or will experience harm if the care is not provided;
- (4) A healthcare professional has secured the written informed consent of the minor as prescribed in section 3, and the minor, under all the surrounding circumstances, is mentally and physically competent to provide consent

3. Written informed consent

A health care professional, as defined above, may provide gender-affirming hormone therapy after the health care professional has received the informed written consent of the minor.

- A. To ensure that consent for gender-affirming hormone therapy is informed consent, the health care professional who will provide this care or another health care professional shall provide the information and counseling described here, and shall do so in a manner that, in the health care professional's professional judgment, is not misleading and will be understood by the patient, and:
 - (1) Explain that the information being given to the minor is being given objectively, and is not intended to coerce, persuade, or induce the minor to consent to this care;
 - (2) Explain that the minor may withdraw the decision to commence gender-affirming hormone therapy at any time before such therapy begins, and afterwards but while the individual is still a minor,
 - (3) Clearly and fully explore with the minor of alternative choices for managing gender dysphoria;
 - (4) Explain the physiological effects of, benefits, and possible consequence of proceeding with gender-affirming hormone therapy, and as to ceasing such care;
 - (5) Explain that the minor may request information about the information and services available regarding gender-affirming hormone therapy from public and private agencies, ;
 - (6) Discuss the possibility of involving the minor's parent or parents, or guardian or guardians, in the minor's decision-making about gender-affirming hormone therapy and the minor's concerns, including whether the minor believes it is in their best interests to do so; and
 - (7) Provide an adequate opportunity for questions and answers about gender-affirming hormone therapy.
- B. After the health care professional provides the information and counseling to a minor as required by this subsection, that person shall have the minor sign and date a form stating that:
 - (1) The minor has received information on gender affirming hormone therapy, its possible consequences and benefits, and alternatives to gender affirming hormone therapy, and what public and private agencies are available to provide information

and that a list of these agencies and the services available from each will be provided if the minor requests;

- (2) The minor has received an explanation that the minor may withdraw a decision on to proceed with receiving gender-affirming hormone therapy;
 - (3) The alternatives for managing the gender dysphoria have been clearly and fully explored with the minor;
 - (4) The minor has discussed with the person providing the information and counseling the possibility of involving the minor's parent or guardian in the minor's decision making about gender-affirming hormone therapy;
 - (5) The minor or the person providing information and counseling has set forth in writing the reasons for not involving their parents or guardian; and
 - (6) The minor has been given an adequate opportunity to ask questions and receive answers.
- C. The person providing the information and counseling shall also sign and date the form and include that person's address and telephone number. The person shall retain a copy of the verification of the minor's receipt of information and counseling in that provider's files and shall give the form to the minor, or if the minor requests, transmit the form to the health care professional who will be providing gender-affirming hormone therapy. An informed consent which is evidenced in writing containing the information and statements provided in subsection B and which is signed by the minor shall be presumed to be a valid informed consent to treatment. The presumption may be subject to rebuttal only upon proof that the informed consent was obtained through fraud, deception or misrepresentation of material fact.

4. Limitations and Construction

- A. Immunity. When a minor has provided written informed consent as set forth in section 3, or has provided informed consent and a Judge of the District Court allows a petition granting the minor majority rights for purposes of consenting to care as set forth in sections 3 and 4, there shall be a bar to an action by the parent or guardian of the minor on the grounds of battery, malpractice, or any other claim for providing the care without parental consent. The immunity granted shall extend only to the provision of gender-affirming hormone therapy and any necessary accompanying services which are performed in a competent manner.
- B. Recovery is not allowed against any health care professional upon the grounds that the gender-affirming hormone therapy was rendered without the informed consent of the minor when:
- (1) the health care professional, in obtaining the minor's consent, complied with the terms of this chapter and also acted in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities, or,
 - (2) The health care professional has received and acted in good faith on the informed written consent to gender-affirming hormone therapy by the minor to another health

care provider qualified to provide, and who provided the same information and disclosures as specified in subsection. 3 above.

C. Nothing herein limits the rights of medical care otherwise available to 16 and 17-year old minors on their own consent.

D. Nonseverability. In the event that an portion of this section is held invalid, it is the intent of the Legislature that this entire section shall be invalid.

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