

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

DELIBERATIVE

DATE: July 22, 2022
TO: Melanie Fontes Rainer, Director, Office for Civil Rights
CC: Dylan de Kervor, Section Chief
FROM: Vatsala Kumar, Intern
SUBJECT: INFORMATION MEMO – Florida Proposed Rule 59G-1.050

1. Background

In June 2022, the Florida Agency for Health Care Administration proposed amendments to Florida Administrative Code Rule 59G-1.050, the General Medicaid Policy. 48 Fla. Admin. Reg. 2461–62 (June 17, 2022). The proposed rule states that certain gender-affirming procedures are not covered under Florida Medicare. *Id.*

This memorandum will first detail the content and timeline of the proposed rule, as well as the report used to justify promulgation. It will then explore the current status of the proposed rule and developments since its original publication. It will also note the work of Florida organizations on this rule, before turning to next steps on the proposed rule.

a. Timeline and Contents

The Florida Agency for Health Care Administration proposed an amendment to the Florida General Medicaid Policy in June 2022. The proposed amendment adds the following text:

(7) Gender Dysphoria

(a) Florida Medicaid does not cover the following services for the treatment of gender dysphoria:

1. Puberty blockers;
2. Hormones and hormone antagonists;
3. Sex reassignment surgeries; and
4. Any other procedures that alter primary or secondary sexual characteristics.

(b) For the purpose of determining medical necessity, including Early and Periodic Screening, Diagnosis, and Treatment (EPSDT), the services listed in subparagraph (7)(a) do not meet the definition of medical necessity in accordance with Rule 59G-1.010, F.A.C.

48 Fla. Admin. Reg. 2461–62 (June 17, 2022). As rulemaking authority for promulgating this amendment, the agency cites Florida Statute § 409.919 and § 409.961, which some commenters have challenged as being insufficient for this proposal. *See infra* Appendix. Sections 409.919 and 409.961 both include the same language surrounding agency rulemaking. Both state that the agency “shall adopt any rules necessary to comply with or administer” Medicaid “and all rules necessary to comply with federal requirements.” Fla. Stat. § 409.919 (2021); Fla. Stat. § 409.961

(2021).

The Florida Agency for Health Care Administration held a hearing on this proposed rule on July 8, 2022. Written comments were due to the agency on July 11, 2022, and they reportedly received approximately 1,200 total public comments. Forrest Saunders, *Agency for Health Care Administration Set to Decide on Medicaid Coverage of Gender Dysphoria Therapies*, WPTV (July 11, 2022), <https://www.wptv.com/news/lgbtq/lgbtq-advocates-decry-possible-end-of-medicaid-coverage-for-gender-dysphoria-treatments>. No further developments have yet ensued on the rule.

b. Florida Medicaid Report

In order for services to be covered under Florida Medicaid, they must be “medically necessary.” Agency for Health Care Admin., *Florida Medicaid: Definitions Policy* 7 (2017), https://ahca.myflorida.com/medicaid/review/General/59G_1010_Definitions.pdf. Part of this definition includes being “consistent with generally accepted professional medical standards” and not being “experimental or investigational.” *Id.*

Shortly before the proposed rule was published, the Division of Florida Medicaid issued a report (“Florida Medicaid Report”) concluding that gender-affirming care is not medically necessary because it is not “consistent with generally accepted professional medical standards” and it is “experimental or investigational.” See Div. of Fla. Medicaid, *Florida Medicaid: Generally Accepted Professional Medical Standards Determination on the Treatment of Gender Dysphoria* (June 2022), https://www.ahca.myflorida.com/letkidsbekids/docs/AHCA_GAPMS_June_2022_Report.pdf. In making this conclusion, the report opened the door for the Medicaid exclusion. The Florida Medicaid Report incorporates literature reviews on the etiology of gender dysphoria, desistance of gender dysphoria and puberty suppression, cross-sex hormones as a treatment for gender dysphoria, sex reassignment surgery, and the quality of available evidence and bioethical questions. *Id.* at 1. It also explores coverage policies domestically and in western Europe, and includes several attachments, including articles in support. *Id.* at 1–2.

The Florida Medicaid Report claims that “[a]vailable medical literature provides insufficient evidence that sex reassignment through medical intervention is a safe and effective treatment for gender dysphoria” and that studies focusing on the benefits “are either low or very low quality and rely on unreliable methods.” *Id.* at 2. It claims that current evidence around gender-affirming care shows that it “cause[s] irreversible physical changes and side effects that can affect long-term health.” *Id.* From the literature reviews conducted, the report states that “Florida Medicaid has determined that the research supporting sex reassignment treatment is insufficient to demonstrate efficacy and safety.” *Id.* at 3.

Numerous critiques have been levied against the Florida Medicaid Report, both in public comments as described *infra* Part 2 and in external documents. Most comprehensively, faculty members from Yale and other universities¹ drafted a report reviewing the Florida Medicaid

¹ Faculty members were from Yale Law School, Yale School of Medicine Child Study Center, Yale School of Medicine Department of Psychiatry, Yale School of Medicine Department of Pediatrics, University of Texas

Report (“Critical Review”). See Meredith McNamara et al., *A Critical Review of the June 2022 Florida Medicaid Report on the Medical Treatment of Gender Dysphoria* (July 8, 2022), https://medicine.yale.edu/lgbtqi/research/gender-affirming-care/florida%20report%20final%20july%208%202022%20accessible_443048_284_55174_v3.pdf. The Critical Review states that the Florida Medicaid Report “purports to be a review of the scientific and medical evidence but is, in fact, fundamentally unscientific” as it “makes false statements and contains glaring errors regarding science, statistical methods, and medicine.” *Id.* at 2. The Critical Review is structured in five parts. It argues that “medical care for gender dysphoria is supported by a robust scientific consensus, meets generally accepted professional medical standards, and is neither experimental nor investigational”; that the Florida Medicaid Report is “a flawed analysis that ignores the scientific evidence and relies instead on pseudo-science” including experts who have been disqualified in court; that the Florida Medicaid Report “makes unfounded criticisms of robust and well-regarded clinical research and . . . cites sources with little or no scientific merit”; that the Florida Medicaid Report’s “linchpin” is an analysis which is “extremely narrow in scope, inexpert, and so flawed it merits no scientific weight at all”; and that the Florida Medicaid Report “erroneously dismisses solid studies as ‘low quality,’” which if followed regularly would mean that widely-used medications and common medical procedures would also have to be denied coverage. *Id.* at 3.

The Agency for Health Care Administration responded to the Critical Review, stating that it is “another example of the left-wing academia propaganda machine arrogantly demanding you follow their words and not the clear evidence-based science sitting right in front of you” and that it is a “hodgepodge of baseless claims” without authority or credibility. Dara Kam, *Expert Report Condemns Florida’s Plan to Ban Medicaid Coverage for Transgender Care*, Palm Coast Observer (July 17, 2022), <https://www.palmcoastobserver.com/article/expert-report-condemns-floridas-plan-to-ban-medicaid-coverage-for-transgender-care>.

2. Current Status

a. July 8, 2022 Hearing

The Florida Agency for Health Care Administration held a lively public hearing on July 8, 2022 on the proposed rule. The hearing consisted mostly of public comments, a comprehensive summary of which is attached in the Appendix. The full hearing can be viewed online. 7/8/22 Agency for Health Care Administration Hearing on General Medicaid Policy Rule, Fla. Channel (July 8, 2022), <https://thefloridachannel.org/videos/7-8-22-agency-for-health-care-administration-hearing-on-general-medicaid-policy-rule/>.

The hearing included a “panel of experts” consisting of Dr. Andre Van Mol, Dr. Quentin Van Meter, and Dr. Miriam Grossman. Dr. Van Meter has been found by a court unqualified to be an expert on the subject of gender-affirming care. See Stephen Caruso, *A Texas Judge Ruled This Doctor was Not an Expert. A Pennsylvania Republican Invited Him to Testify on Trans Health*

Southwestern, and University of Alabama at Birmingham. See Meredith McNamara et al., *A Critical Review of the June 2022 Florida Medicaid Report on the Medical Treatment of Gender Dysphoria* (July 8, 2022), https://medicine.yale.edu/lgbtqi/research/gender-affirming-care/florida%20report%20final%20july%208%202022%20accessible_443048_284_55174_v3.pdf.

Care, Penn. Capital-Star (Sept. 15, 2020), <https://www.penncapital-star.com/government-politics/a-texas-judge-ruled-this-doctor-was-not-an-expert-a-pennsylvania-republican-invited-him-to-testify-on-trans-health-care/>. He is also the president of the American College of Pediatricians, an advocacy group whose primary focus is to advocate for conservative policies in medicine, which has been categorized by the Southern Poverty Law Center as a hate group. *See American College of Pediatricians*, Southern Poverty L. Ctr., <https://www.splcenter.org/fighting-hate/extremist-files/group/american-college-pediatricians> (last visited July 22, 2022). Dr. Van Mol is also a member. *Andre Van Mol*, Pub. Discourse, <https://www.thepublicdiscourse.com/author/andre-van-mol/> (last visited July 22, 2022). The panelists spoke at several times during the hearing, primarily to point the audience towards the Florida Medicaid Report. *See* Appendix.

Over the two-hour hearing period, fifty public commenters spoke. Forty-two of those commenters supported the proposed rule and eight opposed it. Of the forty-two in support, two formerly identified as transgender but have since detransitioned, eight were representatives of the Christian Family Coalition, and at least ten mentioned God or the Bible as part of their rationale. Many supporters also raised concerns that children and teenagers are not mature or knowledgeable enough to choose these procedures, or that they are being unduly influenced by their peers and may later regret transitioning. Notably, the proposed rule would apply to gender-affirming care for individuals of all ages, not only youth. 48 Fla. Admin. Reg. 2461–62 (June 17, 2022). Several supporters also cited the Florida Medicaid Report as being well-researched and providing a strong basis for the rule; some opponents of the rule noted criticisms of the report including those raised by the Critical Review.

b. Florida Organizations and Individuals

The university faculty who wrote the Critical Review also wrote a significant public comment on the proposed rule. *See* Letter from Anne L. Alstott et al. to Simone Marstiller & Tom Wallace re Rule No. 59G-1.050: General Medicaid Policy (July 8, 2022), https://medicine.yale.edu/lgbtqi/research/gender-affirming-care/alstott%20et%20al%20full%20comment%20proposed%20rule%20re%20gender%20dysphoria_443049_284_55174_v3.pdf. The letter highlights similar concerns, noting that the “complete absence of scientific foundation for the Proposed Rule renders it an arbitrary and capricious use of rulemaking power” and that it “cannot [be] characterize[d] . . . as a valid interpretation of the existing Florida regulations on generally accepted professional medical standards, because the [Florida Medicaid] Report fails to satisfy Florida’s own regulatory requirements for scientific review.” *Id.* at 2. It reiterates concerns about the Florida Medicaid Report, including the cited experts’ bias and lack of expertise, errors about scientific research and medical regulation, and lack of scientific weight. *Id.* passim, 20.

Disability Rights Florida submitted a comment also opposing the proposed rule. *See* Letter from Peter P. Sleasman to Simone Marstiller re Proposed Amendments to Rule 59G-1.050, https://disabilityrightsflorida.org/images/uploads/DRF_Gender_Affirming_Care_Comment_-_Final_Signed.pdf. The letter focuses primarily on how this proposed rule “will cause unnecessary and disproportionate harm to individuals with disabilities living in Florida,” especially those who are low-income. *Id.* at 1. It notes that transgender individuals “are more

DELIBERATIVE

than twice as likely as the general population to live in poverty,” and transgender individuals with disabilities are four times as likely. *Id.* at 2. Disability Rights Florida goes on to raise concerns about the agency’s “apparent failure to take even minimal steps to ensure that the rulemaking workshop . . . is accessible to the very people with disabilities it will directly impact,” citing to the lack of accommodations, contact information for seeking accommodations, and response regarding livestreaming. *Id.* at 3.

As did the Endocrine Society. *See* Letter from Ursula Kaiser to Agency for Health Care Administration re 59G-1.050: General Medicaid Policy (July 8, 2022), <https://www.endocrine.org/-/media/endocrine/files/advocacy/society-letters/2022/july-2022/response-to-fl-medicaid-nprm.pdf>. They note that their guidelines, “while not standards of care that clinicians are legally bound to follow, . . . provide a framework for best practices, and deviations must be justified.” *Id.* at 1–2. They expound on how their guidelines were developed—using a “robust and rigorous process that adheres to the highest standards of trustworthiness and transparency” and with a “systematic review of the evidence that supports [clinical] questions”—in contrast to the Florida Medicaid Report, which “did not include endocrinologists with expertise in transgender medicine,” “makes sweeping statements against gender affirming medical care that are not supported by evidence or references provided,” and “does not acknowledge the data showing harm reduction and improvements in behavioral health issues” that result from gender affirming care. *Id.* at 2–3. The letter goes on to state that this proposed rule would cause irreparable harm to transgender youth, including putting their lives at risk. *Id.* at 6.

Equality Florida advocated against the rule as well. Equality Florida, Press Release, Equality Florida Decries Proposed Rule to Eliminate Medicaid Coverage for Gender Affirming Care (June 17, 2022), <https://www.eqfl.org/proposed-ahca-rule-2022>. They note that this will affect approximately 9,000 transgender Floridians insured with Medicaid, and that “major medical and mental health associations recognize the critical importance of gender affirming care.” *Id.*

The Florida Coalition for Trans Liberation has also put together a short policy brief around the proposed rule. *See* Fla. Coal. for Trans Liberation, *Stop Rule 59G-1.050* (2022), https://drive.google.com/file/d/11CHjVMOOLi_8a1tdaE_jKacf-xOK5akA/view. They note that this proposed rule contravenes all major medical advice, pushes a political agenda, and can be life-threatening. *Id.*

Florida Policy Institute also submitted a comment. *See* Letter from Anne Swerlick to Thomas Wallace re Proposed Rule 59G-1.050, Florida Administrative Code (July 7, 2022), https://www.dropbox.com/s/ld9f8yzo61xrxac/FPI_gender-affirming-care_comments_July72022.pdf?dl=0&mc_cid=08420fb607&mc_eid=6cb16947ac. They note that the proposed rule would “bar transgender patients from accessing essential care and reverse current Medicaid policies which have been in effect for years. *Id.* at 1. They also point out that this is counter to established standards of care, inconsistent with antidiscrimination laws, and exacerbates the challenges that transgender individuals already face. *Id.* It closes by noting that this rule seems to be “weaponiz[ing] [the Medicare program] as a tool for promoting a particular political agenda.” *Id.*

DELIBERATIVE

While the majority of public comments during the July 8 hearing were in support of the rule, few comments posted online seem to be, and Florida Medicaid has not made all of the comments publicly available. Christian Family Coalition, who was also heavily represented at the July 8 hearing, did make a public statement, stating that this rule was “important and necessary” to protect Floridians, “especially minors, from harmful transgender surgeries, hormone blockers, and other unnatural therapies.” *CFC Florida to Testify in Support of DeSantis Administration Rule Banning Medicaid Funding for Transgender Surgeries and Puberty Blockers*, Best Things Fla. (July 8, 2022), <https://bestthingsfl.com/news/cfc-florida-to-testify-in-support-of-desantis-administration-rule-banning-medicaid-funding-for-transgender-surgeries-and-puberty-blockers-31403227-tallahassee-fl.html>.

3. Next Steps

Several nonprofit groups in Florida are prepared to push back against the proposed rule. Lambda Legal, the National Health Law Program, the Florida Health Justice Project, and Southern Legal Counsel issued a statement criticizing the Florida Medicaid Report and stating that they “stand ready to defend the rights of transgender people in Florida.” *LGBTQ Groups to Fight Florida Over Medicaid Ban for Trans Treatments*, CBS Miami (June 6, 2022), <https://www.cbsnews.com/miami/news/lgbtq-groups-fight-florida-medicaid-ban-transgender-treatments/>.

One potential avenue for doing so may be seeking an administrative determination. Florida law says that any person “substantially affected by a . . . proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority. Fla. Stat. § 120.56 (2022). If a complaint is properly filed, the state must assign an administrative law judge (ALJ) to conduct a hearing within thirty days. *Id.* at (1)(c). The ALJ may declare the proposed rule wholly or partially invalid, and the rule then may not be adopted unless the judgment is reversed on appeal. *Id.* at (2)(b).

Appendix: Summary from July 8, 2022 Hearing

This appendix will detail the public comments made at the July 8 hearing regarding the proposed changes to 59G-1.050. There is no readily available transcript of the proceedings, so please note that names below may be missing or misspelled. Each speaker was met with audience applause at the end of their remarks, but any audience reactions during remarks are noted below.

The meeting opened with introductions of the panelists and representatives and a brief summary of the rule before opening the floor for public comments. Public commenters were asked to state their name and organization and to limit comments to two minutes, focusing only on the proposed rule language. The agency also noted that comments could be submitted via email.

The first speaker was Chloe Cole, a 17-year-old detransitioner from California. Cole began medical transition at the age of 13. In retrospect, she states that she was not becoming a man, but was just “fleeing from the uncomfortable feeling of being [a] wom[a]n.” Chloe states that she “really didn’t understand all of the ramifications of any of the medical decisions that [she] was making” when she chose to undergo a double mastectomy at the age of 15. She lamented that she will never be able to breastfeed, has blood clots in her urine, cannot fully empty her bladder, and does not know if she can ever give birth.²

The next speaker was Sophia Galvin, also a detransitioner. She states that she had a history of mental illness, including self-harm and suicidal ideation, and that her desire to transition was “all in an effort to escape the fear of being a woman in this society.” Galvin stated that she had no support when she chose to detransition; her doctor told her to stop taking hormones but she did not see a mental health counselor. She said that “this is not good for children” and she “was harmed by this, and it should not be covered under Medicaid.”

Next, the mother of a transgender boy spoke. She said that a physician gave her son testosterone at the age of 16 without her consent or knowledge, and that Medicaid covered her son’s double mastectomy, hysterectomy, and vaginoplasty. She states that her son had private insurance but it was bypassed. She said that it is “impossible to change one’s biological sex” and that doctors should not be affirming the “lie that biological sex is changeable.” She characterized these lies as “child abuse,” at which point the crowd began to applaud, and said that “amputating the healthy body parts of a child whose brain has not reached full decision-making maturity is simply criminal.” This led to more applause. She further characterized gender-affirming care as a “medical experiment.”

The next speaker, Jeanette Cooper, spoke on behalf of Partners for Ethical Care. Cooper stated that “we need to make space in the public sphere for ethical therapists by removing the medical treatment option” and characterized gender identity affirmation as a “poisoned bandage on the

² Several news sources also reported on Chloe and her testimony. See, e.g., Tyler O’Neil, *California Ex-Trans Teen Backs Florida Ban on Medicaid Funds for Transgender Medical Interventions*, Fox News (July 10, 2022), <https://www.foxnews.com/health/california-ex-trans-teen-backs-florida-ban-medicaid-funds-transgender-medical-interventions>. In one article, she urged individuals to “wait until you are a fully developed adult” prior to transitioning. *Id.* Notably, the Florida proposed rule is not only a prohibition on gender-affirming procedures for minors, but prohibits Medicaid funding for any gender-affirming procedures regardless of age.

DELIBERATIVE

skin of children causing permanent psychological and physical harm.” The audience applauded when Cooper said “everyone knows what a woman is, but some people are afraid to say it.” Cooper went on to state that “the state has no business using taxpayer funding to turn children into permanent medical patients” and “assisting doctors in selling disabilities to vulnerable suffering children.” She further said that gender-affirming care is “not real healthcare” and that the state should instead fund “legitimate care” that addresses trans children’s “actual needs.” She likened the satisfaction children get from gender-affirming care to “a street drug that needs to be injected every day.” Cooper closed by stating that the medical is “failing these families” and that her organization supports the proposed rule.

Donna Lambert, on behalf of Concerned Parents, also supported the rule. She said that “the healthcare professionals are presenting many [parents] with a false and painful choice: accept what we know will permanently harm our children, or lose them to suicide.” She stated that “there is no data to prove that medically transitioning minors prevents suicide” and that parents lose their children down this “dangerous medical path permanently harming their healthy bodies with off-label drugs and experimental surgeries.” Lambert said that transgender children “become angry and hostile and resentful; they begin lashing out at anyone who will not agree with their newfound identity.” She described this as a “destructive social phenomenon” which “cuts parents out of the equation.”

A Christian pastor spoke next, stating that the Bible teaches that “God makes people made and female” and to try and transition people “is a sin” and “should be a criminal abuse of children, especially when they’re not at the age when they can properly process what they’re doing to themselves.” He said that the “one goal” of doctors who provide gender-affirming care is to “cut[] back on the birth rate.” He supported the proposed rule and said Florida should “go further” and classify aiding in this case as “extreme child abuse.”

Brandy Hendricks stated that gender-affirming procedures “have been shown to be extremely harmful, especially to minors.” She lamented that children are being allowed to “change their genders before they’ve even reached puberty or shortly after.” She said that pharmaceutical companies are advertising puberty blockers to children and unethically enriching themselves. She too characterized gender-affirming care as “child abuse” and as “experimental.”

Sabrina Hartsfield, an alumna of Florida State University and a born-again Christian, spoke against the rule. Hartsfield said that “without gender-affirming healthcare, transgender and gender nonconforming individuals will die.” She said that, “according to every major legitimate medical organization, gender-affirming care is the treatment for gender dysphoria.” She said gender affirming care is “medically necessary and lifesaving treatment” that should not be decided by big government overreach. An audience member shouted something indiscernible at this point in Hartsfield’s comment. Hartsfield went on to state that the proposed rule violates the Affordable Care Act and Medicaid Act’s nondiscrimination provisions. She noted that denying gender-affirming care can be life-threatening.

Simone Chris, an attorney and the director of the Transgender Rights Initiative at Southern Legal Council, “vehemently oppose[d]” the proposed rule. She stated that her organization’s experience working with hundreds of transgender individuals has evinced “the tremendous

DELIBERATIVE

benefits that access to [gender-affirming] care provides.” Chris went on to state that “the insidiousness of this rule is exacerbated by the fact that it places in its crosshairs the individuals in our state who are already disproportionately likely” to face poverty, homelessness, poor health outcomes, and limited access to healthcare. She noted that every major medical association supports gender-affirming care, and that the proposed changes would “cause significant harm” by depriving individuals of “critical, lifesaving medical care.” Chris went on to state that the changes to the rule substitute the state’s judgment for that of the patient and their doctor, and that it is a “shameful waste of state resources.” She cited to nationwide litigation which has struck down similar laws as inconsistent with the guarantees provided by the Medicaid Act, the Equal Protection Clause of the Fourteenth Amendment, and the Affordable Care Act, and noted that Florida will undoubtedly face similar challenges, wasting taxpayer money.

The next speaker, Matthew Benson, a pediatrician and pediatric endocrinologist, agreed with the proposed changes, stating that the data used to support gender-affirming care “is not scientific.” He cited to a Swedish study from 2016 which found that the mortality rates of transgender individuals who received gender-affirming care were three times that of the general population, and that they attempted suicide five times more often than the general population. He also cited a similar study from Denmark wherein 10 percent of the study population died over the 20-year study period. Benson said we need better data and longer-term trials “to justify these kinds of very aggressive therapies.”

Karen Schoen, a former teacher, spoke on behalf of Florida Citizens Alliance. She opened by stating that she would like to know “why 0.03 percent of the population is dictating to 99.97 percent of the population” that their elective surgeries should be paid for. This was met with audience applause. Schoen said that “kids change their minds” and that they become fearful of maturing. She lamented that thirteen-year-olds cannot drive a car, have a drink, or shoot a gun, but are “in charge” when it comes to changing their gender. This was met with audience laughter and applause.

The next speaker was Bill Snyder. Snyder first told a story about “reality disease,” stating that “the further we move from reality, the further we move from morality” and that “the further we move from virtue, the more secular we become.” Secularity leads to less freedom, he said, and then urged Florida to approve the changes to the rule.

Avery Fork with Christian Family Coalition, a college counselor, also spoke in support of the proposed rule. She characterized gender-affirming procedures as “unnatural therapies being promoted by radical gender ideals and with no basis in science.” She said the proposed rule would prevent taxpayers from having to pay for “highly unethical and dangerous procedures.”

Richard Carlins also spoke in support of the rule. He said that our Constitution was founded on “biblical principles.” Carlins said children are being indoctrinated through commercials, Disney World, Coca-Cola commercials, and restaurants, and that gender-affirming procedures are a “horrendous evil.” He said that “God raises up nations and he brings down nations,” which was met with audience vocal support, and that this is a recent phenomenon. He said we’ve been “living in Judeo Christian principles” for 1500 years, and “it’s just recently that we’re throwing any mention of God [or] the Bible under the bus.”

DELIBERATIVE

Amber Hand with the Body of Christ grew up with two queer parents. She said she had been considering gender transition for most of her life, but that “we have to teach these kids right from wrong” and that it is wrong to teach children they can make these decisions. Hand said that she is glad she never transitioned because she recently realized she wanted children. She went on to quote the Bible and that it’s “not okay to change your identity.”

The next speaker, Ms. Hazen, also supported the rule. She said that children are being pressured at a young age to identify as transgender, and that much of the pressure comes from the internet. She cited a follow-up study of individuals who transitioned, which found that the suicide rate in those individuals was twenty times the general population. She said that this evinces the “deep regret” they face after “mutilating” their bodies. She said that children “don’t understand that they will never be able to procreate ever again” when we “mutilate these children’s bodies at an early age.”

Leonard Lord also spoke in favor of the proposed changes. He said that he was also uncomfortable in his body as a child but was able to get comfortable by becoming closer with God. The audience murmured in approval. He said that “either we’re playing games, or we really believe there’s a God and the Bible is true,” and that this “problem” happens because we don’t believe in God. Lord said that, with regard to mental health issues, “God’s spirit is the answer to what’s missing in their lives,” again leading to audience applause and cheers. He said that by taking God, the Bible, and prayer out of schools, we are removing ourselves of power, love, and a sound mind. The audience again applauded. He said the “devil is the author of confusion” (the audience cheered) and that “if you spend your life trying to figure out if you’re a man or a woman you’ll never know why you’re here” (again, audience applause).

The next speaker, Pam, also supported “stopping Medicaid from paying for children and teenagers to have such changes.” She said that children are “confused” and likened gender-affirming procedures to “paying for [children] to have furry animal body parts,” to which the audience cheered. She said she is thankful that Florida will “stop the madness” for “the sake of the children.”

Jon Harris Maurer, the public policy director for Equality Florida, spoke next against the proposed rule. Maurer said that the proposed changes are without scientific or legal basis and are “clearly discriminatory.” He cited to numerous experts and organizations who endorse gender-affirming care. Maurer also said that the agency “lacks the specific delegated rule-making authority to adopt the proposed rule” and that the statute cited “grants no authority” for the agency to usurp the role of healthcare providers. He said the rule is discriminatory and targets the transgender community, and that it would harm the 9,000 transgender Floridians on Medicaid. An audience member began to shout, and the audience began to speak over Maurer. He said that the proposed rule is politically calculated and urged them to reject the rule.

Anthony Verdugo spoke on behalf of the Christian Family Coalition as the Executive Director. Verdugo supported the rule. He said that “they call it gender-affirming care” but “they don’t care, and it’s not affirming.” He called Chloe Cole and Sophia Galvin “heroes,” and said that this is a “war on children and this is a crime against humanity.” Verdugo said that “groomers” are pressuring children to undergo gender-affirming procedures. He cites to the warning label on a

DELIBERATIVE

package of hormones which states that emotional instability is a side effect. He said that the organizations Maurer listed “have been discredited” and cited to “more renowned” organizations who believe that “the suppression of normal puberty, the use of disease-causing cross sex hormones, and the surgical mutilation and sterilization of children” are “atrocities” and “not health care.”

The next speaker, a veteran and police officer, said that doctors, parents, teachers, and scientists have been wrong before, but that detransitioners are the “evidence” we need. He said we need to “stop being ignorant” and that churches are bigger than any organization and in support of the proposed change. The audience met this with cheers and applause throughout.

Michael Haller, a doctor and professor of medicine at the University of Florida, spoke on his own behalf. After establishing himself as an expert, he said that this proposed rule makes “numerous false claims, uses biased reviews of the literature, and relies on more so-called experts who actually lack actual expertise” in caring for transgender youth. He said that the state’s assertion that gender-affirming care is not safe or effective is “patently false” and that nearly every major medical organization supports this care. He says the state is “either unwilling or willfully chooses to ignore the totality of evidence for gender-affirming care.” He said that the state’s experts are unqualified. Haller noted that the proposal is “poorly-conceived,” likely to cause harm, and should be rejected.

At this point, a member of the panel, Dr. Van Meter, made a comment. He said that the Endocrine Society guidelines are not standards of care, but merely guidelines, drafted by “ideologues” from the World Professional Association for Transgender Health. He said that this group excluded “world renowned experts in the field” and did not include their input “on purpose.” He said that we “have to stop using the term ‘standards of care’ when there are absolutely no standards of care in this instance that have been addressed.”

Robert Youelis spoke next, lamenting that gender-affirming care was not on anyone’s radar even five years ago. He said that this is man “proclaim[ing] himself as God” and that there is only one truth. Youelis said we are “philosophically and morally” going down a slippery slope when we start considering gender-affirming care. He said that brains are not fully developed until the age of twenty-five, and children cannot make other decisions in life, so we should not be educating anyone about gender identities until they are in twelfth grade.

The next speaker, Keith Claw of Florida Citizens Alliance, spoke next. He said that children in public schools are “purposefully confused, desensitized, and even pressured into abnormal sexual behavior” and that “gender ideologues are coaching kids to be into this dysphoria.” He said that there is ongoing debate as to whether gender dysphoria is biological or psychological. He said that taxpayers should not have to pay for gender-affirming care.

Robert Roper spoke next, also in support of the rule. He said that it “serves to protect the children.” He said “gender confusion is the only disorder that comes with a false assertion that a child can be born in the wrong body” and that it is “impossible” to become the opposite gender. He went on to say that gender dysphoria is the only “disorder [where] the body is mangled to conform to the thoughts of the mind” and where “the child actually dictates his or her medical

DELIBERATIVE

care . . . instead of the other way around.” He called this a “social media epidemic manufactured by social media influencers making a lot of money off the very vulnerable element of our society.” He likened gender-affirming procedures to giving drugs to a drug addict or alcohol to an alcoholic and cited to a Reddit post where 35,000 individuals expressed regret of transitioning.

Karl Charles of Lambda Legal spoke against the proposed rule. He said that this care is “essential and in some cases lifesaving,” “clinically effective,” “evidence based,” and “widely accepted.” Charles said that exclusions such as this one cause “serious immediate and irreparable harm” to those who already experience “well-documented and pervasive stigma” and barriers to healthcare. He said that he is particularly concerned by the agency’s characterization of this care as “experimental and ineffective,” and that this is contrary to available medical evidence and misrepresents studies. He notes that the so-called experts relied on have been discredited and do not treat transgender patients. He noted that no one on the panel was a transgender Medicaid recipient in Florida, and that singling out transgender Medicaid participants violates Equal Protection and ACA § 1557.

A panelist at this point referred everyone to the appendices to the Florida Medicaid Report, including Dr. Cantor’s reports cited to on page thirty-nine, which discusses each organization that has supported gender-affirming care.

Ed Wilson spoke in support of the proposed rule, saying that it would “protect children who are not mature enough to be comfortable in their own bodies” from “making mistakes that will destroy their lives.” He said that taxpayer money should “never be used to destroy innocent lives” and that gender-affirming care “never actually succeed[s]” but does cause harm. He characterized it as “mutilation” and an “atrocit[y]” to be banned, “not healthcare.”

Suzanne Zimmerman, a relative of a gender dysphoric youth, spoke next. She “pray[ed]” that the state “not make it easy” for this youth’s parents to be persuaded towards gender-affirming care. She pointed to the testimony of detransitioners to state that “God doesn’t make mistakes” (the audience said “amen”). She urged them to support the changes.

Jean Halloran also supports the changes. She said that Medicaid should not be supporting or paying for gender-affirming care. She likened gender-affirming care to cosmetic changes to make her look younger, receiving audience applause and laughter.

Ezra Stone, a clinical social worker, pointed to research that medical transition is safe and effective. They pointed to clients who have “expressed tremendous relief” and an increased sense of safety when they are able to access medical care. They said that “understanding and being seen as [one’s] true self creates a sense of belonging, which is a fundamental human need.” They pointed to the political climate in Florida as causing harm and anxiety to “transgender, nonbinary, questioning, and gender-diverse Floridians.” Their patients “worry about their access to medical care” and experience fear of violence daily, which supports the minority stress model that says that expecting harm and violence has a negative impact on mental health and well-being. They said that this proposed change will create an atmosphere of fear and take away medically necessary care.

DELIBERATIVE

Peggy Joseph shared the thoughts of Ryan T. Anderson, author of *When Harry Became Sally*. She cited to the Obama Administration's refusal to mandate coverage of gender-affirming surgeries under Medicaid, which said that there was "not enough evidence" to determine whether it improved health outcomes. She said that studies with positive outcomes were exploratory, without follow-up, which "could be pointing to suicide." She cited to the Swedish study regarding suicide rates, as well. She said the "minimal standard of care should be with a standard of normality" and that gender dysphoric thoughts are "misguided and cause harm."

A panelist again interjected to note that the report on pages 35–36 and 42–45 discusses the international consensus.

Jack Walton with the Christian Family Coalition is a pastor. He said he has counseled queer individuals for thirty-seven years. He believes that "gender dysphoria should be labeled as child abuse" and the doctors who prescribe gender-affirming care are "tear[ing] the child apart and call[ing] it health care." Walton says that gender-affirming care is "not science" and that any such procedures "should be labeled criminal." He said that "nearly 90 percent of those that escape from that life do it by the time they reach the end of puberty because they come back to their senses that they were created male and female by God." Walton expressed that suicide happens when a transgender person transitions but "still do[es]n't find the completion that they thought they felt." He said that many individuals transition because of child abuse they faced as children or because they were not accepted by others. He closed by saying there are "two genders, male and female; women bear children, women breastfeed, women have menstrual cycles, men do not." He said he "would not provide the anorexic with food and [he] would not say give money to do something that would harm a child."

Another member of the Christian Family Coalition, Jose, also supported the changes. He characterized gender-affirming care as "mutilation" and said that transgender individuals need "counseling" and should not be given a "destructive choice." He said that everyone will have to "stand before our living God and give account for where we stand on this and other issues." He thanked Chloe Cole and Sophia Galvin for their testimonies.

The panel then asked that members of the same organization be mindful of their time.

Bob Johnson, an attorney, spoke next. He thanked the agency for putting together the report, noting that it is "thorough," and said the "case is compelling." He strongly supports the rule change, and this is in large part due to the report making the case. He noted that the "FDA does not approve any medication as clinically indicated for gender dysphoria" and lamented the lack of randomized controlled trials and long-term data for puberty suppression medication.

Sandy Westad also spoke on behalf of Christian Family Coalition. She said that her heart is "breaking for what these kids are going through" and that "the parents need to stay in control." She said that kids "play house" and "pretend," but they "don't want to be or understand or even know what it is to change from one sex to another." She said, "children cannot make those kinds of decisions" and "cannot decide who they are."

Gayle Carlins also spoke from Christian Family Coalition. She said her beliefs are based on the

DELIBERATIVE

Bible, which is “the only truth that there is,” and which says that “God created male and female.” She went on to “bring science into it,” stating that females have two X chromosomes and males have an X and a Y chromosome, and that “it’s an impossibility to change from one to the other” “no matter what kind of mutilation or anything is done to a person.”

Dorothy Barron spoke next, also from Christian Family Coalition. She first thanked Florida’s “great governor,” eliciting audience cheers and applause, and thanked Chloe Cole and Sophia Galvin for not “going along with what you were trying to be brainwashed into” (also eliciting audience cheers and applause). She said “they’re definitely targeting our youngest,” and lamented that “we can’t seem to find baby formula anywhere but yet Medicaid can fund this nonsense.” Barron said it “has to be left up to the parents,” and that “whatever you choose to practice in the privacy of your own home is your business”; she is “not discriminating against any genders or whatever.” She said that it needs to be “taken out of the schools.” She said Michael Haller’s testimony was “shameful” and is “why we’re in this bloody mess right now,” to which the audience also cheered and applauded.

The panel reminded the public to be focused on the rule and respectful of other speakers.

Troy Peterson, the president of Warriors of Faith, supported Christian Family Coalition, and came from the Tampa Bay area. He said that he represents “thousands that stand in agreement” with the proposed change. He thanked the doctors for the report and said that “when [he] saw the evidence, [he] could clearly see that we need this rule.” He quoted from Genesis and said that God created male and female, and he is opposed to Michael Haller as well. He said that “if [he] had any authority in the medical field, [he] would have [Michael Haller’s] license revoked.” The audience whistled and verbally approved. He said that the most thorough follow-up of transgender individuals in Sweden said that “the suicide rate is twenty times that of the comparable peers” and that “50 percent of the gender identity confused children have thoughts of suicide.”

Janet Rath spoke next. She said that “fifty years ago, as parents, we were smarter than what’s going on today,” and that parents are being left out of their children’s lives. She said some of this is the fault of parents and some is the fault of teachers. She said her granddaughter, a teacher, has told her that “if she has a child that comes in and identifies as a cat, she must have a litterbox there and a bowl of water.” Rath said that our country is going “absolutely insane,” and the audience murmured in agreement. She said that Dr. Fauci is “nothing but a money-grabbing liar” and “we have been hoodwinked ever since.” Rath went on to say that “Chinese children in third grade are learning advanced calculus” but “our third graders are learning which bathroom to use.”

Gerald Lomer drove 3.5 hours to attend the hearing. He supported the proposed rule and “the best governor in the United States,” to which the audience cheered and applauded. He told “stories” of a girl who wanted to spend more time with her father and thought that being a boy was the best way to do so and a boy who wanted to spend more time with his mother and thought that being a girl was the best way to do so. He said that thirteen-year-olds cannot drive a car, drink a beer, or smoke a cigarette, but are able to take hormones and obtain surgeries for gender-affirming care. He characterized gender-affirming surgeries as “mutilating.”

DELIBERATIVE

A pastor from Florida spoke next on behalf of Protect Our Children Project, Duval County Charter House, and Christian Family Coalition. She supported the rule prohibiting funding for “unnatural therapies” and does not want taxpayers to subsidize transgender care. She said that “transgenderism is driven by unethical pharmaceutical companies enriching themselves with puberty blockers” and that this is child abuse. She cited to Swedish psychiatrist Dr. Christopher Gillberg, who has said that “pediatric transition is possibly one of the greatest scandals in medical history.”

Paul Aarons, a physician, spoke next. He said he has transgender patients and friends. He said that he opposes the proposed change, because it “conflicts with the preponderance of medical science and practice and would do irreparable harm” to transgender Floridians of all ages. He said that the American Academy of Pediatrics and its Florida chapter have directly refuted the agency’s report. Aarons said that, “contrary to an earlier comment, the Endocrine Society has stated, ‘medical intervention for transgender youth and adults, including puberty suppression hormone therapy, and medically indicated surgery, has been established as their standard of care. Federal and private insurers should cover such interventions as prescribed by a physician.’” He said gender dysphoria is “very real” and that people should meet and speak to transgender individuals, which will help them realize that denial of care “at any age would be inhumane and a violation of human rights.” He said that gender-affirming care is “generally accepted professional medical standards” and that this rule would put the health and lives of transgender people in danger. He said that “it feels like Medicaid is crossing into a political lane by seeking to preempt provider/patient/family decision-making.” He said that, if the agency still wants to address this topic, they should “at least convene an appropriate panel of experts including transgender community members to inform yourselves and the public about the overwhelming evidence against denying coverage for gender affirming care.”

A doctor on the panel then encouraged everyone to read the report and its attachments. He said that the report focuses on studies which have been brought up, and “specifically the flaws” in those studies. He also encouraged audience members not to interrupt when others are speaking. He went on to say that the Endocrine Society’s 2017 guidelines “are guidelines, just that,” and they “do not guarantee an outcome” and “do not establish a standard of care.” He also referred to international reviews which “all came to the same conclusion” that “this should not be going on in minors at all,” to which the audience applauded. He said that children need “strong psychological support” and that four decades of literature point to the “overwhelming probability of mental health problems after these childhood events” and “problems like autism spectrum disorder.” He said that in other nations, having “psychological instability . . . blocks you from the transition pathway” and that “those things be taken care of first because transition simply won’t fix them.” He said that the report is a “very well-researched document” and addresses a lot of the concerns raised in comment letters.

Another panelist then referred everyone to Attachment C of the report and Dr. Hruz’s *Deficiencies in Scientific Evidence for Medical Management of Gender Dysphoria*.

January Littlejohn, a mental health counselor, spoke next. Her child expressed that they were experiencing gender dysphoria in 2020, shortly after three of their friends had started identifying as transgender. She said that the middle school had “socially transitioned [her child] without

their knowledge or consent”³ and that her child’s “mental health spiraled.” She said that she has worked with a psychologist to help address her child’s low self-esteem and anxiety, and has “given [her child] more one-on-one time, in-person activities away from trans influences, limited [her child’s] internet use, and declined to affirm [her child’s] newly-chosen name and pronouns.” She said that they set “appropriate boundaries” and allowed her child to choose hairstyle and clothing but “denied harmful requests such as breast binders, puberty blockers, cross-sex hormones, and surgeries.” She said it was “clear from [their] conversations” that her child was uncomfortable with their developing body and had “an intense fear of being sexualized.” Littlejohn said that her child was “filled with self-loathing and was in true emotional pain,” but “had been led by peers and influencers to believe that gender was the source of [their] pain.” She said that her child needed to be “remind[ed] that hormones and surgeries can never change [their] sex or resolve [their] issues.” She said that she “shudder[s] to think what could have happened if [they] had affirmed [her child’s] false identity and consented to medical treatment” as opposed to “lovingly affirm [her child] as [they are], beautifully unique and irreplaceable and undeniably female.” She said that her child has “desisted and is on a path to self-love” but unfortunately gender dysphoric children are “being encouraged to activism peer pressure to disassociate from their bodies and to believe their body parts can be simply removed, modified, or replaced.” Littlejohn said that “the irreversible consequences of medically transitioning, including loss of sexual and reproductive function, cannot be fully understood by children or teens who lack the necessary maturity or experience.”

Kendra Barris, a mental health attorney, spoke next. She first addressed the comment about the lack of peer-reviewed standards of care, saying that this lack means that “a lot of people who are harmed or experience bad outcomes from these surgeries or other interventions have no ability to sue.” She said that “they have had decades to create peer-reviewed standards of care and they have not,” and she suspects that some people do not want to standards because it would open them up to lawsuits, which is not currently happening. She went on to say that “when you put a female on testosterone, within about five years [they are] going to have to have a hysterectomy,” which for teens could mean a potential hysterectomy before the age of twenty. She said that “hysterectomy is correlated with negative mental health outcomes and cognitive decline” and that this is worse the earlier a hysterectomy is performed. She said that “essentially, the earlier you do the hysterectomy, the earlier the onset of dementia.” She is “very concerned about” how in a few decades “we’re going to have an absolute wave of young females, 40–50 years old, with early-onset cognitive decline” in assisted-living facilities. She said that “some people who are trans and have dementia forget that they’re trans” and if they don’t have written consent to continue their transition, they “might be cut off.” She worries that “we have not considered all of the implications of this.”

The next speaker was Nathan Bruemmer, Florida’s LGBTQ Consumer Advocate. He opposed the proposed rule “on behalf of healthcare consumers,” saying that consumers “must be provided with accurate information, education, choice, safety, representation, and regress.” He said that

³ Note that news organizations have reported that Ms. Littlejohn was aware of her child’s choice to change names and pronouns at school and told the school she would not stop them from doing so. She later filed a lawsuit against the school. See, e.g., Leyla Santiago, *Fact Check: Emails Show One of Desantis’s Stories Backing the Rationale for So-Called ‘Don’t Say Gay’ Law Didn’t Happen as the Governor Says*, CNN Politics (Apr. 6, 2022), <https://www.cnn.com/2022/04/06/politics/fact-check-desantis-dont-say-gay-family-narrative/index.html>.

DELIBERATIVE

“documented, well-researched standards of care have been established, are based on a wide range of evidence, and conclude that gender-affirming medical care is medically necessary and safe and effective.” In other words, “gender-affirming care *is* the standard of care.” Bruemmer said that the proposed rule would “deny health care consumers . . . access to the standard of care.” He said that agencies must defend the rights of all Floridians, including transgender Floridians, and that this includes the right to non-discriminatory healthcare coverage. He said we should work to increase access to healthcare, not lessen or remove it. Bruemmer said that he is “one of . . . tens of thousands of transgender Floridians” who have had access to gender-affirming care, and who are “happy, and successful, and thriving.” He said that transgender Floridians “deserve the rights and benefits afforded to all.”

The next speaker’s name was inaudible, but he also spoke in support of the proposed rule. He told examples of his fifteen-year-old son making bad decisions, including speeding on his dirt bike and wanting to leave home, as proof that “these kids can[’t] make a decision on what they want that’s going to be with them for the rest of life.” He said that the doctors who spoke previously “are despicable,” “need to have their licenses taken away,” and “are a disgrace to the human race.”

A panelist thanked him for his comment and said, “we respect everybody’s comments, including the doctors that you referenced.”

Dottie McPherson spoke next on behalf of the Florida Federation of Republican Women. She said that even at the age of eighteen “children don’t have the maturity to handle certain responsibilities given them” like driving and alcohol, and that “even older adults don’t.” She said that state programs include “programs for abused and neglected children, but not gender decisions.” She urged the panel to “prevent funding the destruction of children’s genitalia and hormonal balance.” McPherson urged the panel to consider unintended consequences, such as “taxpayer money that will need to be used for lawsuits by those whose lives were ruined from surgeries that they got while they were immature or too young to understand,” parents whose “parental rights were denied to protect their children’s future.” She said that “life isn’t fair” and we have to “stop giving in to the ‘poor pitiful me’ syndrome.” McPherson said that government “has no business funding these things.”

Maria Caulkins spoke next in support of the proposed rule. She said that taxpayer money should not be spent on funding surgeries that are “unnecessarily and tremendously harmful.” She said that there is “a war on our children” and that we need to “protect our children” and “support our governor” by being on the “right side” of this war.

James Caulkins also spoke in support of the rule, saying that we’re “in a battle in this country.” He said that the people of Florida “have spoken” by electing “the greatest governor in the United States,” to which the audience cheered and applauded. Caulkins said that we “don’t need this stuff, this evil, this Medicaid funding for transgender surgery” and that Florida should lead other states against “this evil.”

The final speaker, whose name was also inaudible, spoke in support of the proposed rule. She said that, years ago, she was told by a doctor that she needed to undergo hormone therapy, but

DELIBERATIVE

she “saw the risks involved.” She said that hormone therapy is an attempt to “prevent . . . natural things from occurring,” such as menstruation, and we can’t expect it not to have any problems. She cited to Bill Maher, who pointed out that transgender procedures were only occurring in major cities where “social engineering is happening and where people are being influenced” but not in the rest of the country. She lamented that she can’t go to the media and say anything against transgender individuals because it will be “criticized and condemned” which “isn’t fair.” She said that “the government should not be involved in supporting any kind of procedure to these young kids.”

A panelist thanked everyone for their comments and then clarified the purpose of the rule. He said that it is *not* “a ban on treatment for gender dysphoria,” but rather lack of Medicaid coverage for services mentioned in the proposed rule. He also said that “there are other comprehensive coverage of services for gender dysphoria currently in the Florida Medicaid program” before reading some of those services (community-based services, psychiatric services, emergency services and inpatient services, and behavioral health services in schools).

STRATEGY PLANNING DIVISION (SPD) WEEKLY REPORT

DATE: 4/21/23

TO: Melanie Fontes Rainer, Director

THROUGH: Robinsue Frohboese, Principal Deputy
Lauren Jee, Chief of Staff

FROM: Susan Rhodes, Acting Deputy Director for Strategic Planning

SUBJECT: Strategic Planning Weekly Report for Week

(b)(5)

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act



RON DESANTIS
GOVERNOR

JASON WEIDA
SECRETARY

January 30, 2023

ONLINE SUBMISSION ONLY

FOIA Officer/Director
Office of the Secretary
Freedom of Information and Privacy Acts Division
U.S. Department of Health & Human Services
Hubert H. Humphrey Bldg, Suite 729H
200 Independence Avenue, S.W.
Washington, D.C. 20201

Office for Civil Rights Headquarters
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
Sam Nunn Atlanta Federal Center, Suite 16T70
61 Forsyth Street, S.W.
Atlanta, GA 30303-8909
Email: ocrmail@hhs.gov

Re: Freedom of Information Act (FOIA) Request

Dear Freedom of Information Officer:

This letter is submitted on behalf of the Florida Agency for Health Care Administration ("AHCA" or the "Requester"). The Requester submits this request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 and 45 C.F.R. § 5 *et seq.* We request that a copy of the records detailed below be provided to us. We do not wish to inspect the records first.

I. FOIA Request

The Requester requests records related to the U.S. Department of Health and Human Services' ("HHS") March 2, 2022 Notice and Guidance on Gender Affirming Care, Civil Rights and Patient



Office for Civil Rights Headquarters
U.S. Department of Health & Human Services

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
January 30, 2023

Page 2 of 8

Privacy (the “March 2022 HHS Guidance”)¹ and regarding the subject matter of litigation that was recently brought against AHCA, *Dekker, et al. v. Weida, et al.*, No. 4:22-cv-325-RLH (N.D. Fla.), challenging the adoption of a rule, Florida Administrative Code 59G-1.050(7), prohibiting Medicaid coverage of certain services for treating gender dysphoria.

Specifically, the Requester requests the following Records² in the possession of HHS and/or the HHS Office for Civil Rights from January 20, 2022, through the date of production of the Records:

1. Records related to the March 2022 HHS Guidance, including, but not limited to, any inter- or intra-agency communications by HHS regarding the March 2022 HHS Guidance.
2. Records related to the Florida Department of Health’s April 20, 2022 Guidance titled “Treatment of Gender Dysphoria for Children and Adolescents” (“April 2022 DOH Guidance”).³
3. Records related to AHCA’s June 2022 Generally Accepted Professional Medical Standards Determination on the Treatment of Gender Dysphoria (“June 2022 AHCA GAPMS”) report.⁴

¹ See United States Department of Health and Human Services, *Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy*, Mar. 2, 2022, available at <https://www.hhs.gov/sites/default/files/hhs-ocr-notice-and-guidance-gender-affirming-care.pdf> (last visited Jan. 30, 2023).

² “Records” as that term is defined under FOIA (5 U.S.C. § 552(f)(2)), existing in any format whatsoever, including, but not limited to, written correspondence, records kept in electronic format on computers and/or electronic storage devices, email correspondence (whether through .gov email addresses or private third-party services such as Gmail), records of telephone correspondence, records pertaining to in-person meetings, calendar or scheduling entries, videotapes, photographs, computer print-outs, telephone messages, or voicemail messages.

Records sought include, but are not limited to, inter- and intra-agency records and external records and communications, briefings, reports, memoranda, legal opinions, directives, policy statements, talking points, notes, and any other materials.

³ See Florida Department of Health, *Treatment of Gender Dysphoria for Children and Adolescents*, April 20, 2022, available at <https://www.floridahealth.gov/documents/newsroom/press-releases/2022-04-20220420-gender-dysphoria-guidance.pdf> (last visited Jan. 30, 2023).

⁴ See AHCA Website, *Generally Accepted Professional Medical Standards Determination on the Treatment of Gender Dysphoria*, June 2, 2022, available at <https://ahca.myflorida.com/letkidsbekids> (last visited Jan. 30, 2023).



Office for Civil Rights Headquarters
U.S. Department of Health & Human Services

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
January 30, 2023

Page 3 of 8

4. Records related to AHCA's adoption of Rule 59G-1.050(7) of the Florida Administrative Code, titled "Gender Dysphoria."
5. Records related to the *Dekker, et al. v. Weida, et al.*, No. 4:22-cv-325-RLH (N.D. Fla.) litigation challenging AHCA's adoption of Florida Administrative Code 59G-1.050(7).
6. Records containing communications with or about Equality Florida regarding the March 2022 HHS Guidance, the April 2022 DOH Guidance, the June 2022 AHCA GAPMS, or AHCA's adoption of Florida Administrative Code 59G-1.050(7).
7. Records containing communications with or about Florida Health Justice Project, Southern Legal Counsel, Lambda Legal, National Health Law Program, or Pillsbury Winthrop Shaw Pittman LLP regarding the March 2022 HHS Guidance, the April 2022 DOH Guidance, the June 2022 AHCA GAPMS, or AHCA's adoption of Florida Administrative Code 59G-1.050(7).
8. Records containing communications with or about the American Academy of Pediatrics, the Endocrine Society, or the World Professional Association for Transgender Health regarding the March 2022 HHS Guidance, the April 2022 DOH Guidance, the June 2022 AHCA GAPMS, or AHCA's adoption of Florida Administrative Code 59G-1.050(7).
9. Records containing communications with or about the American Academy of Pediatrics, the Endocrine Society, or the World Professional Association for Transgender Health regarding gender dysphoria.
10. Records related to pending litigation involving HHS, or its components, regarding gender dysphoria.
11. Records related to any subpoena issued or investigation commenced regarding gender dysphoria.



Office for Civil Rights Headquarters
U.S. Department of Health & Human Services

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
January 30, 2023

Page 4 of 8

The Requestor asks that HHS process this request consistent with the Department of Justice's policy memorandum (directed to the heads of executive departments and agencies) emphasizing the presumption of disclosure under FOIA, as amended by the FOIA Improvement Act of 2016.⁵

II. Application for Expedited Processing

The Requestor requests that HHS and the Office for Civil Rights provide expedited processing of this FOIA request, which qualifies for expedited treatment pursuant to 45 C.F.R. § 5.27 and 5 U.S.C. § 552(a)(6)(E). There is an "urgency to inform the public concerning actual or alleged Federal Government activity" as it relates to issues of significant interest to the public,⁶ including the issuance of the March 2022 HHS Guidance and the above-mentioned litigation that has been brought against AHCA. Furthermore, the Requester is "primarily engaged in dissemination of information." 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 45 C.F.R. § 5.27.

Specifically, the Requestor is "primarily engaged in disseminating information to the public." 45 C.F.R. § 5.27. AHCA is a state agency with a mission of "facilitating better health care for all Floridians." As part of that mission, AHCA is "responsible for the administration of the Florida Medicaid program, licensure and regulation of Florida's health facilities, and for providing information to Floridians about the quality of care they receive."⁷ Dissemination of information about government activities, particularly with respect to healthcare, is a critical and substantial component of AHCA's mission. Because doing so is vital to its work, AHCA will disseminate any information obtained through this request to the public, contributing to the public's enhanced understanding of HHS's decision to issue the March 2022 HHS Guidance and its position and response to AHCA's adoption of Florida Administrative Code 59G-1.050(7).

⁵ See Dep't of Justice Office of Information Policy, *Memorandum from The Attorney General*, March 15, 2022, available at <https://www.justice.gov/oiip/page/file/1483516/download> (last visited Jan. 30, 2023).

⁶ See, e.g., Katie Keith, "HHS Issues Guidance to Help Protect Transgender Youth," *Health Affairs*, Mar. 7, 2022, available at <https://www.healthaffairs.org/doi/10.1377/forefront.20220307.303712> (last visited Jan. 30, 2023); Alta Spells and Jen Christensen, "Florida Health Department Advises Against Gender-affirming Care for Youth," *CNN*, Apr. 20, 2022, available at <https://www.cnn.com/2022/04/20/health/florida-gender-affirming-care-health-department-guidance/index.html> (last visited Jan. 23, 2023); Arek Sarkissian, "Groups Sue Florida Over Medicaid Ban on Gender-affirming Care," *Politico*, Sept. 7, 2022, available at <https://www.politico.com/news/2022/09/07/coalition-sues-florida-over-medicaid-ban-00055205> (last visited Jan. 30, 2023).

⁷ See AHCA website, <https://ahca.myflorida.com/> (last visited Jan. 30, 2023).



Office for Civil Rights Headquarters
U.S. Department of Health & Human Services

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
January 30, 2023

Page 5 of 8

Additionally, there is an “urgent need” for the requested information to inform the public because of the pending lawsuit that has been filed against AHCA, *Dekker, et al. v. Weida, et al.*, No. 4:22-cv-325-RLH (N.D. Fla.), seeking preliminary and permanent injunctions prohibiting AHCA from enforcing Florida Administrative Code 59G-1.050(7). The requested records in HHS’s possession are likely to become relevant to the issues being litigated in this time-sensitive and important matter.

As required by federal regulation, 45 C.F.R. § 5.27(a), I hereby certify that the above information is true and correct to the best of my knowledge and belief.

III. Request for a Public Interest Fee Waiver

The Requester requests a waiver of search, review, and duplication fees because disclosure of the requested records (1) “is likely to contribute significantly to public understanding of the operations or activities of the Government,” 5 U.S.C. § 552(a)(4)(A)(iii), and (2) “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

Specifically, the Requester is entitled to a waiver of fees because it satisfies the three factors outlined in HHS regulations. 45 C.F.R. § 5.54.

First, disclosure of the requested information here “would shed light on the operations or activities of the government,” *id.* § 5.54(b)(1), in connection with HHS’s issuance of the March 2022 HHS Guidance, as well as HHS’s position and actions taken regarding Florida and AHCA’s exclusion of Medicaid coverage of certain services for treating gender dysphoria and the resultant litigation currently pending against AHCA.

Second, as discussed above, because AHCA will disseminate any information obtained through this request to the public, disclosure of the requested information will likely “contribute significantly to public understanding” of HHS’s operations and approaches to States’ actions regarding Medicaid funding of certain services for treating gender dysphoria. *Id.* § 5.54(b)(2). Disclosure of this information will be “meaningfully informative about [HHS’s] operations or activities” because it is not already in the public domain, because, to date, HHS has not released the information sought in this FOIA request. It also pertains to HHS’s recent policies and activities that have recently come under heightened public scrutiny, making them of great significance to



Office for Civil Rights Headquarters
U.S. Department of Health & Human Services

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
January 30, 2023

Page 6 of 8

the public understanding of the agency's operations and positions on those important issues. *Id.* § 5.54(b)(2)(i).

Furthermore, because the request pertains to prominent issues of great public interest, concern, and debate, including the litigation recently filed against AHCA, disclosure of these records will necessarily "contribute to the understanding of a reasonably broad audience of persons interested in the subject," *id.* § 5.54(b)(2)(ii). AHCA's "expertise in the subject area" and its substantial "ability and intention to effectively convey information to the public" demonstrates that disclosure here will contribute to the understanding of a broad audience of persons. As described above, AHCA is a state agency "responsible for the administration of the Florida Medicaid program, licensure and regulation of Florida's health facilities, and for providing information to Floridians about the quality of care they receive."⁸ By definition, AHCA has the knowledge and expertise to understand the information sought and to facilitate its public dissemination quickly and effectively. And, as described, AHCA will disseminate this information to the public.

Third, this request is not "in the commercial interest of the requester." *Id.* § 5.54(b)(3). AHCA does not have any commercial interest in the disclosure of the requested records. AHCA does not seek to commercially benefit from this information. Nor could it possibly do so. Rather, the dissemination of information to the public will be at no cost and for the purpose of educating the public and promoting AHCA's mission.

IV. Search and Processing of Requested Records

Upon receipt of this request, please take all reasonable steps to preserve relevant public records while the request is pending.

Please search for responsive records regardless of format, medium, or physical characteristics. The Requester asks that responsive electronic records be produced in electronically in their native file format, if possible, or the format most conducive to an expedited production. Alternatively, the Requester requests that the Records be provided electronically in text-searchable PDF, in the best image quality in HHS's possession, and in separate, Bates-stamped files.

⁸ See AHCA Website, <https://ahca.myflorida.com> (last visited Jan. 30, 2023).



Office for Civil Rights Headquarters
U.S. Department of Health & Human Services

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
January 30, 2023

Page 7 of 8

The Requester further requests that you provide an estimated date on which you will finish processing this request.

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i).

If it is your position that any portion of the requested records is exempt from disclosure, we request that you provide a *Vaughn* index of those documents. *See Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA." *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979). Moreover, the *Vaughn* index must "describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information." *King v. U.S. Dep't of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987).

In the event that some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable, non-exempt portions of the requested records. *See* 5 U.S.C. § 552(b). Pursuant to regulation, please clearly delineate any and all redactions in such a manner so that the justification for each redaction is apparent. If it is your position that a document contains non-exempt segments and that those non-exempt segments are so dispersed throughout the documents as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed through the document. *Mead Data Cent. v. U.S. Dep't of the Air Force*, 455 F.2d 242, 261 (D.C. Cir. 1977). Claims of non-segregability must be made with the same detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

For records available in electronic format, please email the documents to Andrew.Sheeran@ahca.myflorida.com. Please send all other requested documents to the attention of:

Andrew T. Sheeran, General Counsel
2727 Mahan Drive
Mail Stop # 3
Tallahassee, FL 32308

2727 Mahan Drive • Mail Stop #
Tallahassee, FL 32308
AHCA.MyFlorida.com



[Facebook.com/AHCAFlorida](https://www.facebook.com/AHCAFlorida)
[Twitter.com/AHCA_FL](https://twitter.com/AHCA_FL)

Office for Civil Rights Headquarters
U.S. Department of Health & Human Services

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
January 30, 2023

Page 8 of 8

Phone: (850) 412-3630

Email: Andrew.Sheeran@ahca.myflorida.com

Because of the time-sensitive nature of this request, the Requester asks that you strictly comply with the 20-day time limit established by FOIA. *See* 5 U.S.C. § 552(a)(6)(A). Please be advised that once this 20-day period has expired, you are deemed to have constructively denied this request, and we will consider the internal appeals process to be constructively exhausted. *See, e.g., Citizens for Ethics and Responsibility in Government v. Fed. Election Comm'n*, 711 F.3d 180 (D.C. Cir. 2013).

The Requester also respectfully requests that documents be made available as soon as they are located and reviewed via a rolling production. The Requester will undertake to pay reasonable increased costs incurred as part of a rolling production.

If you have any questions about this request, please do not hesitate to contact either me, or General Counsel Andrew T. Sheeran.

Sincerely,

Jason Weida
Secretary

2727 Mahan Drive • Mail Stop #
Tallahassee, FL 32308
AHCA.MyFlorida.com



Facebook.com/AHCAFlorida
Twitter.com/AHCA_FL

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

STRATEGY PLANNING DIVISION WEEKLY REPORT

DATE: 4/20/233/31/23

TO: Melanie Fontes Rainer, Director

THROUGH: Robinsue Frohboese, Principal Deputy
Lauren Jee, Chief of Staff

FROM: Dylan Nicole de Kervor, Assoc. Deputy Director for Strategic Planning
o/b/o Susan Rhodes, Acting Deputy Director for Strategic Planning

SUBJECT: Strategic Planning Weekly Report for Week

(b)(5)

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act



RON DESANTIS
GOVERNOR

JASON WEIDA
SECRETARY

January 30, 2023

ONLINE SUBMISSION ONLY

FOIA Officer/Director
Office of the Secretary
Freedom of Information and Privacy Acts Division
U.S. Department of Health & Human Services
Hubert H. Humphrey Bldg, Suite 729H
200 Independence Avenue, S.W.
Washington, D.C. 20201

Office for Civil Rights Headquarters
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
Sam Nunn Atlanta Federal Center, Suite 16T70
61 Forsyth Street, S.W.
Atlanta, GA 30303-8909
Email: ocrmail@hhs.gov

Re: Freedom of Information Act (FOIA) Request

Dear Freedom of Information Officer:

This letter is submitted on behalf of the Florida Agency for Health Care Administration ("AHCA" or the "Requester"). The Requester submits this request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 and 45 C.F.R. § 5 *et seq.* We request that a copy of the records detailed below be provided to us. We do not wish to inspect the records first.

I. FOIA Request

The Requester requests records related to the U.S. Department of Health and Human Services' ("HHS") March 2, 2022 Notice and Guidance on Gender Affirming Care, Civil Rights and Patient



Office for Civil Rights Headquarters
U.S. Department of Health & Human Services

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
January 30, 2023

Page 2 of 8

Privacy (the “March 2022 HHS Guidance”)¹ and regarding the subject matter of litigation that was recently brought against AHCA, *Dekker, et al. v. Weida, et al.*, No. 4:22-cv-325-RLH (N.D. Fla.), challenging the adoption of a rule, Florida Administrative Code 59G-1.050(7), prohibiting Medicaid coverage of certain services for treating gender dysphoria.

Specifically, the Requester requests the following Records² in the possession of HHS and/or the HHS Office for Civil Rights from January 20, 2022, through the date of production of the Records:

1. Records related to the March 2022 HHS Guidance, including, but not limited to, any inter- or intra-agency communications by HHS regarding the March 2022 HHS Guidance.
2. Records related to the Florida Department of Health’s April 20, 2022 Guidance titled “Treatment of Gender Dysphoria for Children and Adolescents” (“April 2022 DOH Guidance”).³
3. Records related to AHCA’s June 2022 Generally Accepted Professional Medical Standards Determination on the Treatment of Gender Dysphoria (“June 2022 AHCA GAPMS”) report.⁴

¹ See United States Department of Health and Human Services, *Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy*, Mar. 2, 2022, available at <https://www.hhs.gov/sites/default/files/hhs-ocr-notice-and-guidance-gender-affirming-care.pdf> (last visited Jan. 30, 2023).

² “Records” as that term is defined under FOIA (5 U.S.C. § 552(f)(2)), existing in any format whatsoever, including, but not limited to, written correspondence, records kept in electronic format on computers and/or electronic storage devices, email correspondence (whether through .gov email addresses or private third-party services such as Gmail), records of telephone correspondence, records pertaining to in-person meetings, calendar or scheduling entries, videotapes, photographs, computer print-outs, telephone messages, or voicemail messages.

Records sought include, but are not limited to, inter- and intra-agency records and external records and communications, briefings, reports, memoranda, legal opinions, directives, policy statements, talking points, notes, and any other materials.

³ See Florida Department of Health, *Treatment of Gender Dysphoria for Children and Adolescents*, April 20, 2022, available at <https://www.floridahealth.gov/documents/newsroom/press-releases/2022-04-20220420-gender-dysphoria-guidance.pdf> (last visited Jan. 30, 2023).

⁴ See AHCA Website, *Generally Accepted Professional Medical Standards Determination on the Treatment of Gender Dysphoria*, June 2, 2022, available at <https://ahca.myflorida.com/letkidsbekids> (last visited Jan. 30, 2023).



Office for Civil Rights Headquarters
U.S. Department of Health & Human Services

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
January 30, 2023

Page 3 of 8

4. Records related to AHCA's adoption of Rule 59G-1.050(7) of the Florida Administrative Code, titled "Gender Dysphoria."
5. Records related to the *Dekker, et al. v. Weida, et al.*, No. 4:22-cv-325-RLH (N.D. Fla.) litigation challenging AHCA's adoption of Florida Administrative Code 59G-1.050(7).
6. Records containing communications with or about Equality Florida regarding the March 2022 HHS Guidance, the April 2022 DOH Guidance, the June 2022 AHCA GAPMS, or AHCA's adoption of Florida Administrative Code 59G-1.050(7).
7. Records containing communications with or about Florida Health Justice Project, Southern Legal Counsel, Lambda Legal, National Health Law Program, or Pillsbury Winthrop Shaw Pittman LLP regarding the March 2022 HHS Guidance, the April 2022 DOH Guidance, the June 2022 AHCA GAPMS, or AHCA's adoption of Florida Administrative Code 59G-1.050(7).
8. Records containing communications with or about the American Academy of Pediatrics, the Endocrine Society, or the World Professional Association for Transgender Health regarding the March 2022 HHS Guidance, the April 2022 DOH Guidance, the June 2022 AHCA GAPMS, or AHCA's adoption of Florida Administrative Code 59G-1.050(7).
9. Records containing communications with or about the American Academy of Pediatrics, the Endocrine Society, or the World Professional Association for Transgender Health regarding gender dysphoria.
10. Records related to pending litigation involving HHS, or its components, regarding gender dysphoria.
11. Records related to any subpoena issued or investigation commenced regarding gender dysphoria.



Office for Civil Rights Headquarters
U.S. Department of Health & Human Services

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
January 30, 2023

Page 4 of 8

The Requestor asks that HHS process this request consistent with the Department of Justice's policy memorandum (directed to the heads of executive departments and agencies) emphasizing the presumption of disclosure under FOIA, as amended by the FOIA Improvement Act of 2016.⁵

II. Application for Expedited Processing

The Requestor requests that HHS and the Office for Civil Rights provide expedited processing of this FOIA request, which qualifies for expedited treatment pursuant to 45 C.F.R. § 5.27 and 5 U.S.C. § 552(a)(6)(E). There is an "urgency to inform the public concerning actual or alleged Federal Government activity" as it relates to issues of significant interest to the public,⁶ including the issuance of the March 2022 HHS Guidance and the above-mentioned litigation that has been brought against AHCA. Furthermore, the Requester is "primarily engaged in dissemination of information." 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 45 C.F.R. § 5.27.

Specifically, the Requestor is "primarily engaged in disseminating information to the public." 45 C.F.R. § 5.27. AHCA is a state agency with a mission of "facilitating better health care for all Floridians." As part of that mission, AHCA is "responsible for the administration of the Florida Medicaid program, licensure and regulation of Florida's health facilities, and for providing information to Floridians about the quality of care they receive."⁷ Dissemination of information about government activities, particularly with respect to healthcare, is a critical and substantial component of AHCA's mission. Because doing so is vital to its work, AHCA will disseminate any information obtained through this request to the public, contributing to the public's enhanced understanding of HHS's decision to issue the March 2022 HHS Guidance and its position and response to AHCA's adoption of Florida Administrative Code 59G-1.050(7).

⁵ See Dep't of Justice Office of Information Policy, *Memorandum from The Attorney General*, March 15, 2022, available at <https://www.justice.gov/oiip/page/file/1483516/download> (last visited Jan. 30, 2023).

⁶ See, e.g., Katie Keith, "HHS Issues Guidance to Help Protect Transgender Youth," *Health Affairs*, Mar. 7, 2022, available at <https://www.healthaffairs.org/doi/10.1377/forefront.20220307.303712> (last visited Jan. 30, 2023); Alta Spells and Jen Christensen, "Florida Health Department Advises Against Gender-affirming Care for Youth," *CNN*, Apr. 20, 2022, available at <https://www.cnn.com/2022/04/20/health/florida-gender-affirming-care-health-department-guidance/index.html> (last visited Jan. 23, 2023); Arek Sarkissian, "Groups Sue Florida Over Medicaid Ban on Gender-affirming Care," *Politico*, Sept. 7, 2022, available at <https://www.politico.com/news/2022/09/07/coalition-sues-florida-over-medicaid-ban-00055205> (last visited Jan. 30, 2023).

⁷ See AHCA website, <https://ahca.myflorida.com/> (last visited Jan. 30, 2023).



Office for Civil Rights Headquarters
U.S. Department of Health & Human Services

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
January 30, 2023

Page 5 of 8

Additionally, there is an “urgent need” for the requested information to inform the public because of the pending lawsuit that has been filed against AHCA, *Dekker, et al. v. Weida, et al.*, No. 4:22-cv-325-RLH (N.D. Fla.), seeking preliminary and permanent injunctions prohibiting AHCA from enforcing Florida Administrative Code 59G-1.050(7). The requested records in HHS’s possession are likely to become relevant to the issues being litigated in this time-sensitive and important matter.

As required by federal regulation, 45 C.F.R. § 5.27(a), I hereby certify that the above information is true and correct to the best of my knowledge and belief.

III. Request for a Public Interest Fee Waiver

The Requester requests a waiver of search, review, and duplication fees because disclosure of the requested records (1) “is likely to contribute significantly to public understanding of the operations or activities of the Government,” 5 U.S.C. § 552(a)(4)(A)(iii), and (2) “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

Specifically, the Requester is entitled to a waiver of fees because it satisfies the three factors outlined in HHS regulations. 45 C.F.R. § 5.54.

First, disclosure of the requested information here “would shed light on the operations or activities of the government,” *id.* § 5.54(b)(1), in connection with HHS’s issuance of the March 2022 HHS Guidance, as well as HHS’s position and actions taken regarding Florida and AHCA’s exclusion of Medicaid coverage of certain services for treating gender dysphoria and the resultant litigation currently pending against AHCA.

Second, as discussed above, because AHCA will disseminate any information obtained through this request to the public, disclosure of the requested information will likely “contribute significantly to public understanding” of HHS’s operations and approaches to States’ actions regarding Medicaid funding of certain services for treating gender dysphoria. *Id.* § 5.54(b)(2). Disclosure of this information will be “meaningfully informative about [HHS’s] operations or activities” because it is not already in the public domain, because, to date, HHS has not released the information sought in this FOIA request. It also pertains to HHS’s recent policies and activities that have recently come under heightened public scrutiny, making them of great significance to



Office for Civil Rights Headquarters
U.S. Department of Health & Human Services

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
January 30, 2023

Page 6 of 8

the public understanding of the agency's operations and positions on those important issues. *Id.* § 5.54(b)(2)(i).

Furthermore, because the request pertains to prominent issues of great public interest, concern, and debate, including the litigation recently filed against AHCA, disclosure of these records will necessarily "contribute to the understanding of a reasonably broad audience of persons interested in the subject," *id.* § 5.54(b)(2)(ii). AHCA's "expertise in the subject area" and its substantial "ability and intention to effectively convey information to the public" demonstrates that disclosure here will contribute to the understanding of a broad audience of persons. As described above, AHCA is a state agency "responsible for the administration of the Florida Medicaid program, licensure and regulation of Florida's health facilities, and for providing information to Floridians about the quality of care they receive."⁸ By definition, AHCA has the knowledge and expertise to understand the information sought and to facilitate its public dissemination quickly and effectively. And, as described, AHCA will disseminate this information to the public.

Third, this request is not "in the commercial interest of the requester." *Id.* § 5.54(b)(3). AHCA does not have any commercial interest in the disclosure of the requested records. AHCA does not seek to commercially benefit from this information. Nor could it possibly do so. Rather, the dissemination of information to the public will be at no cost and for the purpose of educating the public and promoting AHCA's mission.

IV. Search and Processing of Requested Records

Upon receipt of this request, please take all reasonable steps to preserve relevant public records while the request is pending.

Please search for responsive records regardless of format, medium, or physical characteristics. The Requester asks that responsive electronic records be produced in electronically in their native file format, if possible, or the format most conducive to an expedited production. Alternatively, the Requester requests that the Records be provided electronically in text-searchable PDF, in the best image quality in HHS's possession, and in separate, Bates-stamped files.

⁸ See AHCA Website, <https://ahca.myflorida.com> (last visited Jan. 30, 2023).



Office for Civil Rights Headquarters
U.S. Department of Health & Human Services

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
January 30, 2023

Page 7 of 8

The Requester further requests that you provide an estimated date on which you will finish processing this request.

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i).

If it is your position that any portion of the requested records is exempt from disclosure, we request that you provide a *Vaughn* index of those documents. See *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA." *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979). Moreover, the *Vaughn* index must "describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information." *King v. U.S. Dep't of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987).

In the event that some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable, non-exempt portions of the requested records. See 5 U.S.C. § 552(b). Pursuant to regulation, please clearly delineate any and all redactions in such a manner so that the justification for each redaction is apparent. If it is your position that a document contains non-exempt segments and that those non-exempt segments are so dispersed throughout the documents as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed through the document. *Mead Data Cent. v. U.S. Dep't of the Air Force*, 455 F.2d 242, 261 (D.C. Cir. 1977). Claims of non-segregability must be made with the same detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

For records available in electronic format, please email the documents to Andrew.Sheeran@ahca.myflorida.com. Please send all other requested documents to the attention of:

Andrew T. Sheeran, General Counsel
2727 Mahan Drive
Mail Stop # 3
Tallahassee, FL 32308

2727 Mahan Drive • Mail Stop #
Tallahassee, FL 32308
AHCA.MyFlorida.com



Facebook.com/AHCAFlorida
Twitter.com/AHCA_FL

Office for Civil Rights Headquarters
U.S. Department of Health & Human Services

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
January 30, 2023

Page 8 of 8

Phone: (850) 412-3630

Email: Andrew.Sheeran@ahca.myflorida.com

Because of the time-sensitive nature of this request, the Requester asks that you strictly comply with the 20-day time limit established by FOIA. *See* 5 U.S.C. § 552(a)(6)(A). Please be advised that once this 20-day period has expired, you are deemed to have constructively denied this request, and we will consider the internal appeals process to be constructively exhausted. *See, e.g., Citizens for Ethics and Responsibility in Government v. Fed. Election Comm'n*, 711 F.3d 180 (D.C. Cir. 2013).

The Requester also respectfully requests that documents be made available as soon as they are located and reviewed via a rolling production. The Requester will undertake to pay reasonable increased costs incurred as part of a rolling production.

If you have any questions about this request, please do not hesitate to contact either me, or General Counsel Andrew T. Sheeran.

Sincerely,

Jason Weida
Secretary

2727 Mahan Drive • Mail Stop #
Tallahassee, FL 32308
AHCA.MyFlorida.com



Facebook.com/AHCAFlorida
Twitter.com/AHCA_FL

STRATEGY PLANNING DIVISION WEEKLY REPORT

DATE: 4/20/233/31/23

TO: Melanie Fontes Rainer, Director

THROUGH: Robinsue Frohboese, Principal Deputy
Lauren Jee, Chief of Staff

FROM: Dylan Nicole de Kervor, Assoc. Deputy Director for Strategic Planning
o/b/o Susan Rhodes, Acting Deputy Director for Strategic Planning

SUBJECT: Strategic Planning Weekly Report for Week

(b)(5)

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act



RON DESANTIS
GOVERNOR

JASON WEIDA
SECRETARY

January 30, 2023

ONLINE SUBMISSION ONLY

FOIA Officer/Director
Office of the Secretary
Freedom of Information and Privacy Acts Division
U.S. Department of Health & Human Services
Hubert H. Humphrey Bldg, Suite 729H
200 Independence Avenue, S.W.
Washington, D.C. 20201

Office for Civil Rights Headquarters
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
Sam Nunn Atlanta Federal Center, Suite 16T70
61 Forsyth Street, S.W.
Atlanta, GA 30303-8909
Email: ocrmail@hhs.gov

Re: Freedom of Information Act (FOIA) Request

Dear Freedom of Information Officer:

This letter is submitted on behalf of the Florida Agency for Health Care Administration ("AHCA" or the "Requester"). The Requester submits this request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 and 45 C.F.R. § 5 *et seq.* We request that a copy of the records detailed below be provided to us. We do not wish to inspect the records first.

I. FOIA Request

The Requester requests records related to the U.S. Department of Health and Human Services' ("HHS") March 2, 2022 Notice and Guidance on Gender Affirming Care, Civil Rights and Patient



Office for Civil Rights Headquarters
U.S. Department of Health & Human Services

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
January 30, 2023

Page 2 of 8

Privacy (the “March 2022 HHS Guidance”)¹ and regarding the subject matter of litigation that was recently brought against AHCA, *Dekker, et al. v. Weida, et al.*, No. 4:22-cv-325-RLH (N.D. Fla.), challenging the adoption of a rule, Florida Administrative Code 59G-1.050(7), prohibiting Medicaid coverage of certain services for treating gender dysphoria.

Specifically, the Requester requests the following Records² in the possession of HHS and/or the HHS Office for Civil Rights from January 20, 2022, through the date of production of the Records:

1. Records related to the March 2022 HHS Guidance, including, but not limited to, any inter- or intra-agency communications by HHS regarding the March 2022 HHS Guidance.
2. Records related to the Florida Department of Health’s April 20, 2022 Guidance titled “Treatment of Gender Dysphoria for Children and Adolescents” (“April 2022 DOH Guidance”).³
3. Records related to AHCA’s June 2022 Generally Accepted Professional Medical Standards Determination on the Treatment of Gender Dysphoria (“June 2022 AHCA GAPMS”) report.⁴

¹ See United States Department of Health and Human Services, *Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy*, Mar. 2, 2022, available at <https://www.hhs.gov/sites/default/files/hhs-ocr-notice-and-guidance-gender-affirming-care.pdf> (last visited Jan. 30, 2023).

² “Records” as that term is defined under FOIA (5 U.S.C. § 552(f)(2)), existing in any format whatsoever, including, but not limited to, written correspondence, records kept in electronic format on computers and/or electronic storage devices, email correspondence (whether through .gov email addresses or private third-party services such as Gmail), records of telephone correspondence, records pertaining to in-person meetings, calendar or scheduling entries, videotapes, photographs, computer print-outs, telephone messages, or voicemail messages.

Records sought include, but are not limited to, inter- and intra-agency records and external records and communications, briefings, reports, memoranda, legal opinions, directives, policy statements, talking points, notes, and any other materials.

³ See Florida Department of Health, *Treatment of Gender Dysphoria for Children and Adolescents*, April 20, 2022, available at <https://www.floridahealth.gov/documents/newsroom/press-releases/2022-04-20220420-gender-dysphoria-guidance.pdf> (last visited Jan. 30, 2023).

⁴ See AHCA Website, *Generally Accepted Professional Medical Standards Determination on the Treatment of Gender Dysphoria*, June 2, 2022, available at <https://ahca.myflorida.com/letkidsbekids> (last visited Jan. 30, 2023).



Office for Civil Rights Headquarters
U.S. Department of Health & Human Services

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
January 30, 2023

Page 3 of 8

4. Records related to AHCA's adoption of Rule 59G-1.050(7) of the Florida Administrative Code, titled "Gender Dysphoria."
5. Records related to the *Dekker, et al. v. Weida, et al.*, No. 4:22-cv-325-RLH (N.D. Fla.) litigation challenging AHCA's adoption of Florida Administrative Code 59G-1.050(7).
6. Records containing communications with or about Equality Florida regarding the March 2022 HHS Guidance, the April 2022 DOH Guidance, the June 2022 AHCA GAPMS, or AHCA's adoption of Florida Administrative Code 59G-1.050(7).
7. Records containing communications with or about Florida Health Justice Project, Southern Legal Counsel, Lambda Legal, National Health Law Program, or Pillsbury Winthrop Shaw Pittman LLP regarding the March 2022 HHS Guidance, the April 2022 DOH Guidance, the June 2022 AHCA GAPMS, or AHCA's adoption of Florida Administrative Code 59G-1.050(7).
8. Records containing communications with or about the American Academy of Pediatrics, the Endocrine Society, or the World Professional Association for Transgender Health regarding the March 2022 HHS Guidance, the April 2022 DOH Guidance, the June 2022 AHCA GAPMS, or AHCA's adoption of Florida Administrative Code 59G-1.050(7).
9. Records containing communications with or about the American Academy of Pediatrics, the Endocrine Society, or the World Professional Association for Transgender Health regarding gender dysphoria.
10. Records related to pending litigation involving HHS, or its components, regarding gender dysphoria.
11. Records related to any subpoena issued or investigation commenced regarding gender dysphoria.



Office for Civil Rights Headquarters
U.S. Department of Health & Human Services

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
January 30, 2023

Page 4 of 8

The Requestor asks that HHS process this request consistent with the Department of Justice's policy memorandum (directed to the heads of executive departments and agencies) emphasizing the presumption of disclosure under FOIA, as amended by the FOIA Improvement Act of 2016.⁵

II. Application for Expedited Processing

The Requestor requests that HHS and the Office for Civil Rights provide expedited processing of this FOIA request, which qualifies for expedited treatment pursuant to 45 C.F.R. § 5.27 and 5 U.S.C. § 552(a)(6)(E). There is an "urgency to inform the public concerning actual or alleged Federal Government activity" as it relates to issues of significant interest to the public,⁶ including the issuance of the March 2022 HHS Guidance and the above-mentioned litigation that has been brought against AHCA. Furthermore, the Requester is "primarily engaged in dissemination of information." 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 45 C.F.R. § 5.27.

Specifically, the Requestor is "primarily engaged in disseminating information to the public." 45 C.F.R. § 5.27. AHCA is a state agency with a mission of "facilitating better health care for all Floridians." As part of that mission, AHCA is "responsible for the administration of the Florida Medicaid program, licensure and regulation of Florida's health facilities, and for providing information to Floridians about the quality of care they receive."⁷ Dissemination of information about government activities, particularly with respect to healthcare, is a critical and substantial component of AHCA's mission. Because doing so is vital to its work, AHCA will disseminate any information obtained through this request to the public, contributing to the public's enhanced understanding of HHS's decision to issue the March 2022 HHS Guidance and its position and response to AHCA's adoption of Florida Administrative Code 59G-1.050(7).

⁵ See Dep't of Justice Office of Information Policy, *Memorandum from The Attorney General*, March 15, 2022, available at <https://www.justice.gov/oiip/page/file/1483516/download> (last visited Jan. 30, 2023).

⁶ See, e.g., Katie Keith, "HHS Issues Guidance to Help Protect Transgender Youth," *Health Affairs*, Mar. 7, 2022, available at <https://www.healthaffairs.org/doi/10.1377/forefront.20220307.303712> (last visited Jan. 30, 2023); Alta Spells and Jen Christensen, "Florida Health Department Advises Against Gender-affirming Care for Youth," *CNN*, Apr. 20, 2022, available at <https://www.cnn.com/2022/04/20/health/florida-gender-affirming-care-health-department-guidance/index.html> (last visited Jan. 23, 2023); Arek Sarkissian, "Groups Sue Florida Over Medicaid Ban on Gender-affirming Care," *Politico*, Sept. 7, 2022, available at <https://www.politico.com/news/2022/09/07/coalition-sues-florida-over-medicaid-ban-00055205> (last visited Jan. 30, 2023).

⁷ See AHCA website, <https://ahca.myflorida.com/> (last visited Jan. 30, 2023).



Office for Civil Rights Headquarters
U.S. Department of Health & Human Services

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
January 30, 2023

Page 5 of 8

Additionally, there is an “urgent need” for the requested information to inform the public because of the pending lawsuit that has been filed against AHCA, *Dekker, et al. v. Weida, et al.*, No. 4:22-cv-325-RLH (N.D. Fla.), seeking preliminary and permanent injunctions prohibiting AHCA from enforcing Florida Administrative Code 59G-1.050(7). The requested records in HHS’s possession are likely to become relevant to the issues being litigated in this time-sensitive and important matter.

As required by federal regulation, 45 C.F.R. § 5.27(a), I hereby certify that the above information is true and correct to the best of my knowledge and belief.

III. Request for a Public Interest Fee Waiver

The Requester requests a waiver of search, review, and duplication fees because disclosure of the requested records (1) “is likely to contribute significantly to public understanding of the operations or activities of the Government,” 5 U.S.C. § 552(a)(4)(A)(iii), and (2) “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

Specifically, the Requester is entitled to a waiver of fees because it satisfies the three factors outlined in HHS regulations. 45 C.F.R. § 5.54.

First, disclosure of the requested information here “would shed light on the operations or activities of the government,” *id.* § 5.54(b)(1), in connection with HHS’s issuance of the March 2022 HHS Guidance, as well as HHS’s position and actions taken regarding Florida and AHCA’s exclusion of Medicaid coverage of certain services for treating gender dysphoria and the resultant litigation currently pending against AHCA.

Second, as discussed above, because AHCA will disseminate any information obtained through this request to the public, disclosure of the requested information will likely “contribute significantly to public understanding” of HHS’s operations and approaches to States’ actions regarding Medicaid funding of certain services for treating gender dysphoria. *Id.* § 5.54(b)(2). Disclosure of this information will be “meaningfully informative about [HHS’s] operations or activities” because it is not already in the public domain, because, to date, HHS has not released the information sought in this FOIA request. It also pertains to HHS’s recent policies and activities that have recently come under heightened public scrutiny, making them of great significance to



Office for Civil Rights Headquarters
U.S. Department of Health & Human Services

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
January 30, 2023

Page 6 of 8

the public understanding of the agency's operations and positions on those important issues. *Id.* § 5.54(b)(2)(i).

Furthermore, because the request pertains to prominent issues of great public interest, concern, and debate, including the litigation recently filed against AHCA, disclosure of these records will necessarily "contribute to the understanding of a reasonably broad audience of persons interested in the subject," *id.* § 5.54(b)(2)(ii). AHCA's "expertise in the subject area" and its substantial "ability and intention to effectively convey information to the public" demonstrates that disclosure here will contribute to the understanding of a broad audience of persons. As described above, AHCA is a state agency "responsible for the administration of the Florida Medicaid program, licensure and regulation of Florida's health facilities, and for providing information to Floridians about the quality of care they receive."⁸ By definition, AHCA has the knowledge and expertise to understand the information sought and to facilitate its public dissemination quickly and effectively. And, as described, AHCA will disseminate this information to the public.

Third, this request is not "in the commercial interest of the requester." *Id.* § 5.54(b)(3). AHCA does not have any commercial interest in the disclosure of the requested records. AHCA does not seek to commercially benefit from this information. Nor could it possibly do so. Rather, the dissemination of information to the public will be at no cost and for the purpose of educating the public and promoting AHCA's mission.

IV. Search and Processing of Requested Records

Upon receipt of this request, please take all reasonable steps to preserve relevant public records while the request is pending.

Please search for responsive records regardless of format, medium, or physical characteristics. The Requester asks that responsive electronic records be produced in electronically in their native file format, if possible, or the format most conducive to an expedited production. Alternatively, the Requester requests that the Records be provided electronically in text-searchable PDF, in the best image quality in HHS's possession, and in separate, Bates-stamped files.

⁸ See AHCA Website, <https://ahca.myflorida.com> (last visited Jan. 30, 2023).



Office for Civil Rights Headquarters
U.S. Department of Health & Human Services

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
January 30, 2023

Page 7 of 8

The Requester further requests that you provide an estimated date on which you will finish processing this request.

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i).

If it is your position that any portion of the requested records is exempt from disclosure, we request that you provide a *Vaughn* index of those documents. See *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA." *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979). Moreover, the *Vaughn* index must "describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information." *King v. U.S. Dep't of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987).

In the event that some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable, non-exempt portions of the requested records. See 5 U.S.C. § 552(b). Pursuant to regulation, please clearly delineate any and all redactions in such a manner so that the justification for each redaction is apparent. If it is your position that a document contains non-exempt segments and that those non-exempt segments are so dispersed throughout the documents as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed through the document. *Mead Data Cent. v. U.S. Dep't of the Air Force*, 455 F.2d 242, 261 (D.C. Cir. 1977). Claims of non-segregability must be made with the same detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

For records available in electronic format, please email the documents to Andrew.Sheeran@ahca.myflorida.com. Please send all other requested documents to the attention of:

Andrew T. Sheeran, General Counsel
2727 Mahan Drive
Mail Stop # 3
Tallahassee, FL 32308

2727 Mahan Drive • Mail Stop #
Tallahassee, FL 32308
AHCA.MyFlorida.com



Facebook.com/AHCAFlorida
Twitter.com/AHCA_FL

Office for Civil Rights Headquarters
U.S. Department of Health & Human Services

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
January 30, 2023

Page 8 of 8

Phone: (850) 412-3630

Email: Andrew.Sheeran@ahca.myflorida.com

Because of the time-sensitive nature of this request, the Requester asks that you strictly comply with the 20-day time limit established by FOIA. *See* 5 U.S.C. § 552(a)(6)(A). Please be advised that once this 20-day period has expired, you are deemed to have constructively denied this request, and we will consider the internal appeals process to be constructively exhausted. *See, e.g., Citizens for Ethics and Responsibility in Government v. Fed. Election Comm'n*, 711 F.3d 180 (D.C. Cir. 2013).

The Requester also respectfully requests that documents be made available as soon as they are located and reviewed via a rolling production. The Requester will undertake to pay reasonable increased costs incurred as part of a rolling production.

If you have any questions about this request, please do not hesitate to contact either me, or General Counsel Andrew T. Sheeran.

Sincerely,

Jason Weida
Secretary

2727 Mahan Drive • Mail Stop #
Tallahassee, FL 32308
AHCA.MyFlorida.com



Facebook.com/AHCAFlorida
Twitter.com/AHCA_FL

From: Lareau, Alyssa (CRT) <Alyssa.Lareau@usdoj.gov>
To: (b) (b)(6) (b)(6) (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91 (b)(6) (b)(6)
Subject: Re: [EXTERNAL] FW: Thoughts on TX
Date: 2022/03/16 10:40:56
Priority: Normal
Type: Note

Thank you!

On Mar 16, 2022, at 9:13 AM, (b) (b)(6) (b)(6) (HHS/OCR) (b)(6) wrote:

(b)(6)

(b)(6) (b)(6) (b) (b)(6) Esq., MSW (she/her)
Phone: (b)(6) (b)(6)
Email: (b)(6)

From: Carter, Carla (HHS/OCR) <Carla.Carter@HHS.GOV>
Sent: Wednesday, March 16, 2022 9:06 AM
To: (b) (b)(6) (b)(6) (HHS/OCR) (b)(6) Jee, Lauren (HHS/ASL) <Lauren.Jee@hhs.gov>
Subject: RE: Thoughts on TX

(b)(6)

From: (b) (b)(6) (b)(6) (HHS/OCR) (b)(6)
Sent: Wednesday, March 16, 2022 9:02 AM
To: Jee, Lauren (HHS/ASL) <Lauren.Jee@hhs.gov>; Carter, Carla (HHS/OCR) <Carla.Carter@HHS.GOV>
Subject: Thoughts on TX

Hi Lauren and Carla,

(b)(5)

(b)(5)

Thanks,

(b)(6)

(b)(6) (b)(6) (b)(6) Esq., MSW (she/her) | Section Chief

Office for Civil Rights

U.S. Department of Health & Human Services

200 Independence Ave. S.W.

Washington, D.C. 20201

Phone: (b)(6) (b)(6)

Email: (b)(6)

Sender: Lareau, Alyssa (CRT) <Alyssa.Lareau@usdoj.gov>

Recipient: (b)(6) (b)(6) (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91 (b)(6)
(b)(6)

Sent Date: 2022/03/16 10:40:25

Delivered Date: 2022/03/16 10:40:56

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(7)(C)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(7)(C)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(7)(C)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(7)(C)

of the Freedom of Information Act

ENFORCEMENT DIVISION WEEKLY REPORT

DATE: 6/29/2023

TO: Melanie Fontes Rainer, Director, Office for Civil Rights

cc: Robinsue Frohboese, Principal Deputy Director, Office for Civil Rights
Lauren Jee, Chief of Staff, Office for Civil Rights

FROM: Luis Perez, Deputy Director for Enforcement

SUBJECT: Enforcement Division Weekly Report for the Week Ending 6/29/23

(b)(5)



Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

pursuant to exemption

Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(7)(C)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(7)(C)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(7)(C)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(7)(C)

of the Freedom of Information Act

From: Kennedy, Elliot (ACL) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=743280F8CC18416A940D2DFB4F369DA8-KENNEDY, EL <Elliot.Kennedy@acl.hhs.gov>

To: (b) (6) (b) (6) (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91 (b) (6) (b) (6)

Subject: FW: 1557/504 thoughts

Date: 2022/03/10 13:52:20

Priority: Normal

Type: Note

FYI

Elliot Kennedy

Mobile: (b) (6)

Office: 202-795-7412

From: Kennedy, Elliot (ACL)

Sent: Thursday, March 10, 2022 1:52 PM

To: Gottlich, Vicki (ACL/OA) <Vicki.Gottlich@acl.hhs.gov>; Nicholls, Richard (ACL) <Richard.Nicholls@acl.hhs.gov>

Subject: 1557/504 thoughts

Hi Vicki and Rick,

(b)(5)

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

—
Elliot J. Kennedy, JD
Director, Office of Policy Analysis and Development
Center for Policy and Evaluation
Administration for Community Living

Mobile: (b)(6)

Office: 202-795-7412

Sender:	Kennedy, Elliot (ACL) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7432B0FBCC18416A940D2DFB4F369DA8-KENNEDY, EL <Elliot.Kennedy@acl.hhs.gov>
Recipient:	(b)(6) (b)(6) (b)(6) (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91 (b)(6)
Sent Date:	2022/03/10 13:52:19
Delivered Date:	2022/03/10 13:52:20

From:	Durso, Laura (HHS/OCR) (CTR) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2C28EA748A394755AB47B20B85A43F5F-7A1F26C0-21 <Laura.Durso@hhs.gov>
To:	Richards, Jacob (OS/OGC) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Richards, Jacob <Jacob.Richards@hhs.gov>; Martinez, Steven (HRSA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3b39aa204f154c0ea9e56c1b5d4c7186-steven.mart <SMartinez@hrsa.gov>
CC:	(b) (b)(6) (b)(6) (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91 (b)(6) (b)(6) Shipp, Ian (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c2fa90a6ba94947afdf8defa37032d8-Shipp, Ian <Ian.Shipps@hhs.gov>
Subject:	FW: THE HILL: Judge orders Florida health agency to hand over documents on gender-affirming care
Date:	2023/02/02 10:46:48
Priority:	Normal
Type:	Note

Making sure you both got these!

Thank you, Ian!

From: Shipps, Ian (HHS/OCR) <Ian.Shipps@hhs.gov>
Sent: Thursday, February 2, 2023 10:39 AM
To: Section 1557 (OCR) <Section1557OCR@HHS.GOV.onmicrosoft.com>
Subject: RE: THE HILL: Judge orders Florida health agency to hand over documents on gender-affirming care

Here are a handful of New England Journal of Medicine articles for members of the team specifically working on gender affirming care, clinical algorithms (article is specific to measuring GFR (kidney function) without including race/sex-based factors), and one more on overall health equity (probably not all that helpful for this rulemaking).

I was only able to download two PDF versions directly from the NEJM's website, and the other articles, I had to copy/scan from hard copies of the journal. Troy subscribes to the hard copy version, which is only good for two electronic versions of articles (per month, I think).

GAC articles:

GFR Clinical Algorithm:

Health Equity:

Ian Shipps, J.D. (he/him)
Deputy Regional Manager
Rocky Mountain Region
Office for Civil Rights
U.S. Department of Health and Human Services
Phone: (303)-910-2027
Fax: (303)-844-2025

The information contained in this message may be privileged and confidential. If you are NOT the intended recipient, please notify the sender immediately with a copy to <mailto:OCRPrivacy@hhs.gov> and destroy this message.

Please be aware that email communication can be intercepted in transmission or misdirected. Your use of email to communicate Protected Health Information or other information of a confidential nature to us indicates that you acknowledge and accept the possible risks associated with such communication. Please consider communicating any sensitive information by telephone, fax or mail. If you do not wish to have your information sent by email, please contact the sender immediately.

From: (b) (b)(6) (b)(6) (HHS/OCR) (b)(6)
Sent: Thursday, February 2, 2023 6:42 AM
To: Section 1557 (OCR) <Section1557OCR@HHS.GOV.onmicrosoft.com>
Subject: THE HILL: Judge orders Florida health agency to hand over documents on gender-affirming care

Thought y'all might appreciate this recent update from the FL Medicaid trans healthcare ban litigation (b)(6)
(b)(6)

<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fthehill.com%2Fpolicy%2Fhealthcare%2F3840161-judge-orders-florida-health-agency-to-hand-over-documents-on-gender-affirming-care%2F&data=05%7C01%7CIan.Shipps%40hhs.gov%7C1fe380f6d4b144fd64e608db052331ca%7Cd58addea50534a808499ba4d944910df%7C0%7C0%7C638109420950804426%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=np59iyo%2FfhrPQMesqmvYTi29uubGYxS48AF8s43RY18%3D&reserved=0>

by

<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fthehill.com%2Fauthor%2Fbrooke>

=

<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fthehill.com%2Fblogs%2Fblog-briefing-room%2Fnews%2F3720315-florida-medical-boards-vote-to-ban-gender-affirming-care-for-transgender-youth%2F&data=05%7C01%7CIan.Shipps%40hhs.gov%7C1fc380f6d4b144fd64c608db052331ca%7Cd58addea50534a808499ba4d944910df%7C0%7C0%7C638109420950804426%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=wKQD37c2Rg5jcMmyq9YIslaLPUYL88J4Rkwx2lcWm9Xs%3D&reserved=0>
0 - 02/01/23 5:48 PM ET

Florida judge has ordered the state's Agency for Health Care Administration (AHCA) to produce documents related to its determination that gender-affirming health care cannot be covered under Medicaid because treatments are "experimental and investigational."

Attorneys for the AHCA — the agency that controls most of the state's Medicaid program — will have until Feb. 14 to hand over documents it has previously argued are protected under attorney-client privilege and work-product privilege.

Those include exchanges between agency officials and "any person" involved in the creation of a June AHCA report that determined available medical literature provides "insufficient evidence" that puberty blockers, hormones and gender-affirming surgeries are safe and effective treatments for gender dysphoria.

The report has been used to bar an estimated 9,000 transgender Floridians from using Medicaid to help pay for gender-affirming health care and was cited during a November meeting between the state's medical boards that

<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fthehill.com%2Fblogs%2Fblog-briefing-room%2Fnews%2F3720315-florida-medical-boards-vote-to-ban-gender-affirming-care-for-transgender-youth%2F&data=05%7C01%7CIan.Shipps%40hhs.gov%7C1fc380f6d4b144fd64c608db052331ca%7Cd58addea50534a808499ba4d944910df%7C0%7C0%7C638109420950804426%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=MZbbjtfl3X7Gr1N%2Ffkt3eWCKhbxWiiOaktww0PRyigk%3D&reserved=0>

<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fthehill.com%2Fblogs%2Fblog-briefing-room%2Fnews%2F3720315-florida-medical-boards-vote-to-ban-gender-affirming-care-for-transgender-youth%2F&data=05%7C01%7CIan.Shipps%40hhs.gov%7C1fc380f6d4b144fd64c608db052331ca%7Cd58addea50534a808499ba4d944910df%7C0%7C0%7C638109420950804426%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=MZbbjtfl3X7Gr1N%2Ffkt3eWCKhbxWiiOaktww0PRyigk%3D&reserved=0>
that prevents minors in Florida from accessing gender-affirming treatments.

<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.lambdalgal.org%2Ffin-court%2Fcases%2Fdekker-v-marstillcr&data=05%7C01%7CIan.Shipps%40hhs.gov%7C1fc380f6d4b144fd64c608db052331ca%7Cd58addea50534a808499ba4d944910df%7C0%7C0%7C638109420950804426%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=MZbbjtfl3X7Gr1N%2Ffkt3eWCKhbxWiiOaktww0PRyigk%3D&reserved=0>
that prevents minors in Florida from accessing gender-affirming treatments.

Gender-affirming health care for youths and adults has been deemed safe and medically necessary by most professional medical organizations.

In a six-page order published Tuesday, U.S. District Judge Robert Hinkle said the AHCA must produce, among other documents, its communications with experts that were used to inform the agency's June report on gender-affirming health care and the ensuing rule that excluded treatments from Medicaid. Lawyers for the agency have said that while the desired documents were created for rulemaking purposes, they were also intended for use in litigation they knew would follow the adoption of the rule, making them protected documents by law.

Hinkle said he disagreed.

"Even if this leaves room in an appropriate circumstance for protection of documents created for dual purposes — not just when the primary purpose was to aid in future litigation — the experts at issue here were an essential part of the mandated rulemaking process," he wrote in the order, which is part of an ongoing <https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.lambdalgal.org%2Ffin-court%2Fcases%2Fdekker-v-marstillcr&data=05%7C01%7CIan.Shipps%40hhs.gov%7C1fc380f6d4b144fd64c608db052331ca%7Cd58addea50534a808499ba4d944910df%7C0%7C0%7C638109420950804426%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=MZbbjtfl3X7Gr1N%2Ffkt3eWCKhbxWiiOaktww0PRyigk%3D&reserved=0>

<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.lambdalgal.org%2Ffin-court%2Fcases%2Fdekker-v-marstillcr&data=05%7C01%7CIan.Shipps%40hhs.gov%7C1fc380f6d4b144fd64c608db052331ca%7Cd58addea50534a808499ba4d944910df%7C0%7C0%7C638109420950804426%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=MZbbjtfl3X7Gr1N%2Ffkt3eWCKhbxWiiOaktww0PRyigk%3D&reserved=0>

8addea50534a808499ba4d944910df%7C0%7C0%7C638109420950804426%7CUnknown%7CTWFpbGZsb3d8cyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=tjm0PpIMGdLhrNr46QvvgKDMo09h67JYr4XaxEUypTE%3D&reserved=0.

Hinkle continued, “Either the experts were retained to assist in an honest evaluative process—in which event their communications were not within work-product protection — or the rulemaking process was a sham and the real goal was to prevail in the anticipated litigation — a possibility the defendants could embrace to win the discovery battle only by acknowledging that the rulemaking process was fatally flawed, or nearly so.”

Court documents filed earlier this month suggest the state’s rulemaking process was just that, with an AHCA employee alleging that the June report “does not present an honest and accurate assessment” of medical evidence and practice guidelines related to gender-affirming health care.

Attorneys for the AHCA must file a revised log of protected documents by Feb. 2, according to Hinkle’s order. The plaintiffs in the case — two transgender minors and two transgender adults in their 20s — may file an additional motion to compel if they believe the protected documents are being “improperly withheld.”

(b)(6) (b)(6) (b)(6) Esq., MSW (she/her)

Senior Advisor to the Director

Phone: (b)(6) (b)(6)

Email: (b)(6)

From: (b)(6) (b)(6) (b)(6) (b)(6)

Sent: Wednesday, February 1, 2023 11:28 PM

To: (b)(6) (b)(6) (b)(6) (HHS/OCR) (b)(6)

Subject: THE HILL: Judge orders Florida health agency to hand over documents on gender-affirming care

Judge orders Florida health agency to hand over documents on gender-affirming care

A Florida judge has ordered the state’s Agency for Health Care Administration (AHCA) to produce documents related to its determination that gender-affirming health care cannot be covered under Medicaid because treatments are “experimental and investigational.”

Read in The Hill:

https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fapple.news%2FAp4_n391vScennu5aK6uSkA&data=05%7C01%7CIan.Shipps%40hhs.gov%7C1fc380f6d4b144fd64c608db052331ca%7Cd58addea50534a808499ba4d944910df%7C0%7C0%7C638109420950804426%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=3dA%2FY73IIF6dX9uj4tc0OgFxFn1d2zZUNGWk5P0gO0%3D&reserved=0

Shared from

<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.apple.com%2Fnews&data=05%7C01%7CIan.Shipps%40hhs.gov%7C1fc380f6d4b144fd64c608db052331ca%7Cd58addea50534a808499ba4d944910df%7C0%7C0%7C638109420950804426%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=zUTi2ZAG5RsHQ5W5Jvg8Cy7%2FNaLwMbBOC%2FNXyiVxdUE%3D&reserved=0>

Sender:	Durso, Laura (HHS/OCR) (CTR) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2C28EA748A394755AB47B20B85A43F5F-7A1F26C0-21 <Laura.Durso@hhs.gov>
Recipient:	Richards, Jacob (OS/OGC) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Richards, Jacob <Jacob.Richards@hhs.gov>; Martinez, Steven (HRSA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3b39aa204f154c0ea9e56c1b5d4c7186-steven.mart <SMartinez@hrsa.gov>; (b) (b)(6) (b)(6) (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91 (b)(6) (b)(6) Shipps, Ian (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c2fa90a6ba94947afdf8defa37032d8-Shipps, Ian <Ian.Shipps@hhs.gov>
Sent Date:	2023/02/02 10:46:38
Delivered Date:	2023/02/02 10:46:48

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Gender Dysphoria Treatment

Policy Number: 2021T0580L
Effective Date: November 1, 2021

[➔ Instructions for Use](#)

Table of Contents	Page
Coverage Rationale	1
Documentation Requirements	3
Definitions	4
Applicable Codes	5
Description of Services	9
Benefit Considerations	9
Clinical Evidence	10
U.S. Food and Drug Administration	15
References	15
Policy History/Revision Information	16
Instructions for Use	17

Related Commercial Policies

- [Blepharoplasty, Blepharoptosis and Brow Ptosis Repair](#)
- [Botulinum Toxins A and B](#)
- [Cosmetic and Reconstructive Procedures](#)
- [Gonadotropin Releasing Hormone Analogs](#)
- [Habilitative Services and Outpatient Rehabilitation Therapy](#)
- [Panniculectomy and Body Contouring Procedures](#)
- [Rhinoplasty and Other Nasal Surgeries](#)

Community Plan Policy

- [Gender Dysphoria Treatment](#)

Coverage Rationale

[➔ See Benefit Considerations](#)

Notes:

- This Medical Policy does not apply to individuals with ambiguous genitalia or disorders of sexual development.
- This Medical Policy does not apply to fully-insured group plans in California. Refer to the Benefit Interpretation Policy titled [Gender Dysphoria \(Gender Identity Disorder\) Treatment: CA](#).
- This Medical Policy does not apply to fully-insured group plans in the state of Washington. Refer to the Benefit Interpretation Policy titled [Gender Dysphoria \(Gender Identity Disorder\) Treatment: WA](#).

Surgical treatment for Gender Dysphoria may be indicated for individuals who provide the following documentation:

- For breast surgery, a written psychological assessment from at least one [Qualified Behavioral Health Provider](#) experienced in treating Gender Dysphoria* is required. The assessment must document that an individual meets all of the following criteria:
 - Persistent, well-documented [Gender Dysphoria](#)
 - Capacity to make a fully informed decision and to consent for treatment
 - Must be at least 18 years of age (age of majority)
 - Favorable psychosocial-behavioral evaluation to provide screening and identification of risk factors or potential postoperative challenges
- For genital surgery, a written psychological assessment from at least two [Qualified Behavioral Health Providers](#) experienced in treating Gender Dysphoria*, who have independently assessed the individual, is required. The assessment must document that an individual meets all of the following criteria:
 - Persistent, well-documented [Gender Dysphoria](#)
 - Capacity to make a fully informed decision and to consent for treatment
 - Must be at least 18 years of age (age of majority)

- Favorable psychosocial-behavioral evaluation to provide screening and identification of risk factors or potential postoperative challenges
- Complete at least 12 months of successful continuous full-time real-life experience in the desired gender
- Complete 12 months of continuous cross-sex hormone therapy appropriate for the desired gender (unless medically contraindicated)
- Treatment plan that includes ongoing follow-up and care by a Qualified Behavioral Health Provider experienced in treating Gender Dysphoria*

When the above criteria are met, the following surgical procedures to treat Gender Dysphoria are medically necessary and covered as a proven benefit:

- Bilateral mastectomy or breast reduction*
- Clitoroplasty (creation of clitoris)
- Hysterectomy (removal of uterus)
- Labiaplasty (creation of labia)
- Laser or electrolysis hair removal in advance of genital reconstruction prescribed by a physician for the treatment of Gender Dysphoria
- Metoidioplasty (creation of penis, using clitoris)
- Orchiectomy (removal of testicles)
- Penectomy (removal of penis)
- Penile prosthesis
- Phalloplasty (creation of penis)
- Salpingo-oophorectomy (removal of fallopian tubes and ovaries)
- Scrotoplasty (creation of scrotum)
- Testicular prostheses
- Urethroplasty (reconstruction of female urethra)
- Urethroplasty (reconstruction of male urethra)
- Vaginectomy (removal of vagina)
- Vaginoplasty (creation of vagina)
- Vulvectomy (removal of vulva)

*When bilateral mastectomy or breast reduction is performed as a stand-alone procedure, without genital reconstruction procedures, completion of hormone therapy prior to the breast procedure is not required.

Certain ancillary procedures, including but not limited to the following, are considered cosmetic and not medically necessary, when performed as part of surgical treatment for Gender Dysphoria:

Refer to the Benefit Considerations section as member specific benefit plan language may vary.

Note: For fully insured group policies in New York, refer to the Benefit Considerations section for more information.

- Abdominoplasty (also refer to the Coverage Determination Guideline titled Panniculectomy and Body Contouring Procedures)
- Blepharoplasty (also refer to the Coverage Determination Guideline titled Blepharoplasty, Blepharoptosis and Brow Ptosis Repair)
- Body contouring (e.g., fat transfer, lipoplasty, panniculectomy) (also refer to the Coverage Determination Guideline titled Panniculectomy and Body Contouring Procedures)
- Breast enlargement, including augmentation mammoplasty and breast implants
- Brow lift
- Calf implants
- Cheek, chin and nose implants
- Injection of fillers or neurotoxins (also refer to the Medical Benefit Drug Policy titled Botulinum Toxins A and B)
- Face/forehead lift and/or neck tightening
- Facial bone remodeling for facial feminization
- Laser or electrolysis hair removal not related to genital reconstruction
- Hair transplantation

- Lip augmentation
- Lip reduction
- Liposuction (suction-assisted lipectomy) (also refer to the Coverage Determination Guideline titled [Panniculectomy and Body Contouring Procedures](#))
- Mastopexy
- Pectoral implants for chest masculinization
- Rhinoplasty (also refer to the Coverage Determination Guideline titled [Rhinoplasty and Other Nasal Surgeries](#))
- Skin resurfacing (e.g., dermabrasion, chemical peels, laser)
- Thyroid cartilage reduction/reduction thyroid chondroplasty/trachea shave (removal or reduction of the Adam's apple)
- Voice modification surgery (e.g., laryngoplasty, glottoplasty or shortening of the vocal cords)
- Voice lessons and voice therapy

Documentation Requirements

Benefit coverage for health services is determined by the member specific benefit plan document and applicable laws that may require coverage for a specific service. The documentation requirements outlined below are used to assess whether the member meets the clinical criteria for coverage but do not guarantee coverage of the service requested.

CPT Codes*	Required Clinical Information
Gender Dysphoria Treatment	
14000, 14000, 14001, 14041, 15734, 15738, 15750, 15757, 15758, 15820, 15821, 15822, 15823, 15830, 15847, 15877, 15878, 15879, 17999, 19303, 19316, 19318, 19325, 19340, 19342, 19350, 21121, 21123, 21125, 21127, 21137, 21138, 21139, 21172, 21175, 21179, 21180, 21208, 21209, 21210, 30400, 30410, 30420, 30430, 30435, 30450, 53410, 53430, 54125, 54400, 54401, 54405, 54520, 54660, 54690, 55175, 55180, 55970, 55980, 56625, 56800, 56805, 57110, 57335, 58150, 58180, 58260, 58262, 58290, 58291, 58541, 58542, 58543, 58544, 58550, 58552, 58553, 58554, 58570, 58571, 58572, 58573, 58661, 58720, 58940, 64856, 64892, 64896, 67900	<p>Medical notes documenting the following:</p> <ul style="list-style-type: none"> • The history of medical conditions requiring treatment or surgical intervention • A well-defined physical/physiologic abnormality resulting in a medical condition that requires treatment • Recurrent or persistent functional deficit caused by the abnormality • Clinical studies/tests addressing the physical/physiologic abnormality confirming its presence and degree to which it causes impairment • Color photos, where applicable, of the physical and/or physiological abnormality • Physician plan of care with proposed procedures and whether this request is part of a staged procedure; indicate how the procedure will improve and/or restore function • For CPT codes 58260, 58262, 58290 and 58291, provide the additional information: <ul style="list-style-type: none"> ○ The history of medical conditions requiring treatment or surgical intervention ○ Physician plan of care with proposed procedures and whether this request is part of a staged procedure ○ A written psychological assessment from at least two Qualified Behavioral Health Providers experienced in treating Gender Dysphoria, who have independently assessed the individual. The assessment should include all of the following: <ul style="list-style-type: none"> ▪ The member is capable to make a fully informed decision and to consent for treatment ▪ The member must be at least 18 years of age (age of majority) ▪ If significant medical or mental health concerns are present, they must be reasonably well controlled ▪ The member has completed at least 12 months of successful continuous full-time real-life experience in the desired gender ▪ The member has completed 12 months of continuous cross-sex hormone therapy appropriate for the desired gender (unless medically contraindicated) ○ A treatment plan that includes ongoing follow-up and care by a Qualified Behavioral Health Provider experienced in treating Gender Dysphoria

*For code descriptions, see the [Applicable Codes](#) section.

Definitions

Gender Dysphoria in Adolescents and Adults: A disorder characterized by the following diagnostic criteria (Diagnostic and Statistical Manual of Mental Disorders, 5th edition [DSM-5]):

- A. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least two of the following:
 - 1. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics [(or in young adolescents, the anticipated secondary sex characteristics)].
 - 2. 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)].
 - 3. A strong desire for the primary and/or secondary sex characteristics of the other gender.
 - 4. A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).
 - 5. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).
 - 6. 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).
- B. The condition is associated with clinically significant distress or impairment in social, occupational or other important areas of functioning.

Gender Dysphoria in Children: A disorder characterized by the following diagnostic criteria (Diagnostic and Statistical Manual of Mental Disorders, 5th edition [DSM-5]):

- A. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least six of the following (one of which must be criterion A1):
 - 1. 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).
 - 2. In boys (assigned gender), a strong preference for cross-dressing or simulating female attire; or in girls (assigned gender), a strong preference for wearing only typical masculine clothing and a strong resistance to the wearing of typical feminine clothing.
 - 3. A strong preference for cross-gender roles in make-believe play or fantasy play.
 - 4. A strong preference for the toys, games or activities stereotypically used or engaged in by the other gender.
 - 5. A strong preference for playmates of the other gender.
 - 6. In boys (assigned gender), a strong rejection of typically masculine toys, games and activities and a strong avoidance of rough-and-tumble play; or in girls (assigned gender), a strong rejection of typically feminine toys, games and activities.
 - 7. A strong dislike of one's sexual anatomy.
 - 8. A strong desire for the primary and/or secondary sex characteristics that match one's experienced gender.
- B. The condition is associated with clinically significant distress or impairment in social, school or other important areas of functioning.

Qualified Behavioral Health Provider:

- Recommended minimum credentials for behavioral health providers working with adults presenting with gender dysphoria (World Professional Association for Transgender Health [WPATH] Guidelines, version 7, 2012):
 - A minimum of a master's degree or its equivalent in a clinical behavioral science field. This degree should be granted by an institution accredited by the appropriate national or regional accrediting board. The behavioral health provider should have documented credentials from a relevant licensing board;
 - Competence in using the current version of the Diagnostic Statistical Manual of Mental Disorders (DSM) and/or the International Classification of Diseases (ICD) for assessment and diagnostic purposes;
 - Ability to recognize and diagnose coexisting mental health concerns and to distinguish these from gender dysphoria;
 - Documented supervised training and competence in psychotherapy or counseling;
 - Knowledgeable about gender nonconforming identities and expressions, and the evaluation and treatment of gender dysphoria;
 - Continuing education in the assessment and treatment of gender dysphoria;
 - Develop and maintain cultural competence to facilitate their work with transsexual, transgender, and gender nonconforming clients.

- Recommended minimum credentials for behavioral health providers working with children or adolescents presenting with gender dysphoria (WPATH Guidelines, version 7, 2012):
 - Meet the competency requirements for behavioral health providers working with adults, as outlined above;
 - Trained in childhood and adolescent developmental psychopathology;
 - Competent in diagnosing and treating the ordinary problems of children and adolescents.

Applicable Codes

The following list(s) of procedure and/or diagnosis codes is provided for reference purposes only and may not be all inclusive. Listing of a code in this policy does not imply that the service described by the code is a covered or non-covered health service. Benefit coverage for health services is determined by the member specific benefit plan document and applicable laws that may require coverage for a specific service. The inclusion of a code does not imply any right to reimbursement or guarantee claim payment. Other Policies and Guidelines may apply.

CPT Code	Description
11950	Subcutaneous injection of filling material (e.g., collagen); 1 cc or less
11951	Subcutaneous injection of filling material (e.g., collagen); 1.1 to 5.0 cc
11952	Subcutaneous injection of filling material (e.g., collagen); 5.1 to 10.0 cc
11954	Subcutaneous injection of filling material (e.g., collagen); over 10.0 cc
14000	Adjacent tissue transfer or rearrangement, trunk; defect 10 sq cm or less
14001	Adjacent tissue transfer or rearrangement, trunk; defect 10.1 sq cm to 30.0 sq cm
14041	Adjacent tissue transfer or rearrangement, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and/or feet; defect 10.1 sq cm to 30.0 sq cm
15734	Muscle, myocutaneous, or fasciocutaneous flap; trunk
15738	Muscle, myocutaneous, or fasciocutaneous flap; lower extremity
15750	Flap; neurovascular pedicle
15757	Free skin flap with microvascular anastomosis
15758	Free fascial flap with microvascular anastomosis
15769	Grafting of autologous soft tissue, other, harvested by direct excision (e.g., fat, dermis, fascia)
15771	Grafting of autologous fat harvested by liposuction technique to trunk, breasts, scalp, arms, and/or legs; 50 cc or less injectate
15772	Grafting of autologous fat harvested by liposuction technique to trunk, breasts, scalp, arms, and/or legs; each additional 50 cc injectate, or part thereof (List separately in addition to code for primary procedure)
15773	Grafting of autologous fat harvested by liposuction technique to face, eyelids, mouth, neck, ears, orbits, genitalia, hands, and/or feet; 25 cc or less injectate
15774	Grafting of autologous fat harvested by liposuction technique to face, eyelids, mouth, neck, ears, orbits, genitalia, hands, and/or feet; each additional 25 cc injectate, or part thereof (List separately in addition to code for primary procedure)
15775	Punch graft for hair transplant; 1 to 15 punch grafts
15776	Punch graft for hair transplant; more than 15 punch grafts
15780	Dermabrasion; total face (e.g., for acne scarring, fine wrinkling, rhytids, general keratosis)
15781	Dermabrasion; segmental, face
15782	Dermabrasion; regional, other than face
15783	Dermabrasion; superficial, any site (e.g., tattoo removal)
15788	Chemical peel, facial; epidermal
15789	Chemical peel, facial; dermal
15792	Chemical peel, nonfacial; epidermal

CPT Code	Description
15793	Chemical peel, nonfacial; dermal
15819	Cervicoplasty
15820	Blepharoplasty, lower eyelid
15821	Blepharoplasty, lower eyelid; with extensive herniated fat pad
15822	Blepharoplasty, upper eyelid
15823	Blepharoplasty, upper eyelid; with excessive skin weighting down lid
15824	Rhytidectomy; forehead
15825	Rhytidectomy; neck with platysmal tightening (platysmal flap, P-flap)
15826	Rhytidectomy; glabellar frown lines
15828	Rhytidectomy; cheek, chin, and neck
15829	Rhytidectomy; superficial musculoaponeurotic system (SMAS) flap
15830	Excision, excessive skin and subcutaneous tissue (includes lipectomy); abdomen, infraumbilical panniculectomy
15832	Excision, excessive skin and subcutaneous tissue (includes lipectomy); thigh
15833	Excision, excessive skin and subcutaneous tissue (includes lipectomy); leg
15834	Excision, excessive skin and subcutaneous tissue (includes lipectomy); hip
15835	Excision, excessive skin and subcutaneous tissue (includes lipectomy); buttock
15836	Excision, excessive skin and subcutaneous tissue (includes lipectomy); arm
15837	Excision, excessive skin and subcutaneous tissue (includes lipectomy); forearm or hand
15838	Excision, excessive skin and subcutaneous tissue (includes lipectomy); submental fat pad
15839	Excision, excessive skin and subcutaneous tissue (includes lipectomy); other area
15847	Excision, excessive skin and subcutaneous tissue (includes lipectomy), abdomen (e.g., abdominoplasty) (includes umbilical transposition and fascial plication) (List separately in addition to code for primary procedure)
15876	Suction assisted lipectomy; head and neck
15877	Suction assisted lipectomy; trunk
15878	Suction assisted lipectomy; upper extremity
15879	Suction assisted lipectomy; lower extremity
17380	Electrolysis epilation, each 30 minutes
17999	Unlisted procedure, skin, mucous membrane and subcutaneous tissue
19303	Mastectomy, simple, complete
19316	Mastopexy
19318	Breast reduction
19325	Breast augmentation with implant
19340	Insertion of breast implant on same day of mastectomy (i.e., immediate)
19342	Insertion or replacement of breast implant on separate day from mastectomy
19350	Nipple/areola reconstruction
21120	Genioplasty; augmentation (autograft, allograft, prosthetic material)
21121	Genioplasty; sliding osteotomy, single piece
21122	Genioplasty; sliding osteotomies, 2 or more osteotomies (e.g., wedge excision or bone wedge reversal for asymmetrical chin)
21123	Genioplasty; sliding, augmentation with interpositional bone grafts (includes obtaining autografts)
21125	Augmentation, mandibular body or angle; prosthetic material

CPT Code	Description
21127	Augmentation, mandibular body or angle; with bone graft, onlay or interpositional (includes obtaining autograft)
21137	Reduction forehead; contouring only
21138	Reduction forehead; contouring and application of prosthetic material or bone graft (includes obtaining autograft)
21139	Reduction forehead; contouring and setback of anterior frontal sinus wall
21172	Reconstruction superior-lateral orbital rim and lower forehead, advancement or alteration, with or without grafts (includes obtaining autografts)
21175	Reconstruction, bifrontal, superior-lateral orbital rims and lower forehead, advancement or alteration (e.g., plagiocephaly, trigonocephaly, brachycephaly), with or without grafts (includes obtaining autografts)
21179	Reconstruction, entire or majority of forehead and/or supraorbital rims; with grafts (allograft or prosthetic material)
21180	Reconstruction, entire or majority of forehead and/or supraorbital rims; with autograft (includes obtaining grafts)
21208	Osteoplasty, facial bones; augmentation (autograft, allograft, or prosthetic implant)
21209	Osteoplasty, facial bones; reduction
21210	Graft, bone; nasal, maxillary or malar areas (includes obtaining graft)
21270	Malar augmentation, prosthetic material
21899	Unlisted procedure, neck or thorax
30400	Rhinoplasty, primary; lateral and alar cartilages and/or elevation of nasal tip
30410	Rhinoplasty, primary; complete, external parts including bony pyramid, lateral and alar cartilages, and/or elevation of nasal tip
30420	Rhinoplasty, primary; including major septal repair
30430	Rhinoplasty, secondary; minor revision (small amount of nasal tip work)
30435	Rhinoplasty, secondary; intermediate revision (bony work with osteotomies)
30450	Rhinoplasty, secondary; major revision (nasal tip work and osteotomies)
31599	Unlisted procedure, larynx
31899	Unlisted procedure, trachea, bronchi
53410	Urethroplasty, 1-stage reconstruction of male anterior urethra
53430	Urethroplasty, reconstruction of female urethra
54125	Amputation of penis; complete
54400	Insertion of penile prosthesis; non-inflatable (semi-rigid)
54401	Insertion of penile prosthesis; inflatable (self-contained)
54405	Insertion of multi-component, inflatable penile prosthesis, including placement of pump, cylinders, and reservoir
54406	Removal of all components of a multi-component, inflatable penile prosthesis without replacement of prosthesis
54408	Repair of component(s) of a multi-component, inflatable penile prosthesis
54410	Removal and replacement of all component(s) of a multi-component, inflatable penile prosthesis at the same operative session
54411	Removal and replacement of all components of a multi-component inflatable penile prosthesis through an infected field at the same operative session, including irrigation and debridement of infected tissue
54415	Removal of non-inflatable (semi-rigid) or inflatable (self-contained) penile prosthesis, without replacement of prosthesis

CPT Code	Description
54416	Removal and replacement of non-inflatable (semi-rigid) or inflatable (self-contained) penile prosthesis at the same operative session
54417	Removal and replacement of non-inflatable (semi-rigid) or inflatable (self-contained) penile prosthesis through an infected field at the same operative session, including irrigation and debridement of infected tissue
54520	Orchiectomy, simple (including subcapsular), with or without testicular prosthesis, scrotal or inguinal approach
54660	Insertion of testicular prosthesis (separate procedure)
54690	Laparoscopy, surgical; orchiectomy
55175	Scrotoplasty; simple
55180	Scrotoplasty; complicated
55970	Intersex surgery; male to female
55980	Intersex surgery; female to male
56625	Vulvectomy simple; complete
56800	Plastic repair of introitus
56805	Clitoroplasty for intersex state
57110	Vaginectomy, complete removal of vaginal wall;
57335	Vaginoplasty for intersex state
58150	Total abdominal hysterectomy (corpus and cervix), with or without removal of tube(s), with or without removal of ovary(s)
58180	Supracervical abdominal hysterectomy (subtotal hysterectomy), with or without removal of tube(s), with or without removal of ovary(s)
58260	Vaginal hysterectomy, for uterus 250 g or less
58262	Vaginal hysterectomy, for uterus 250 g or less; with removal of tube(s), and/or ovary(s)
58290	Vaginal hysterectomy, for uterus greater than 250 g
58291	Vaginal hysterectomy, for uterus greater than 250 g; with removal of tube(s) and/or ovary(s)
58541	Laparoscopy, surgical, supracervical hysterectomy, for uterus 250 g or less
58542	Laparoscopy, surgical, supracervical hysterectomy, for uterus 250 g or less; with removal of tube(s) and/or ovary(s)
58543	Laparoscopy, surgical, supracervical hysterectomy, for uterus greater than 250 g
58544	Laparoscopy, surgical, supracervical hysterectomy, for uterus greater than 250 g; with removal of tube(s) and/or ovary(s)
58550	Laparoscopy, surgical, with vaginal hysterectomy, for uterus 250 g or less
58552	Laparoscopy, surgical, with vaginal hysterectomy, for uterus 250 g or less; with removal of tube(s) and/or ovary(s)
58553	Laparoscopy, surgical, with vaginal hysterectomy, for uterus greater than 250 g
58554	Laparoscopy, surgical, with vaginal hysterectomy, for uterus greater than 250 g; with removal of tube(s) and/or ovary(s)
58570	Laparoscopy, surgical, with total hysterectomy, for uterus 250 g or less
58571	Laparoscopy, surgical, with total hysterectomy, for uterus 250 g or less; with removal of tube(s) and/or ovary(s)
58572	Laparoscopy, surgical, with total hysterectomy, for uterus greater than 250 g
58573	Laparoscopy, surgical, with total hysterectomy, for uterus greater than 250 g; with removal of tube(s) and/or ovary(s)

CPT Code	Description
58661	Laparoscopy, surgical; with removal of adnexal structures (partial or total oophorectomy and/or salpingectomy)
58720	Salpingo-oophorectomy, complete or partial, unilateral or bilateral (separate procedure)
58940	Oophorectomy, partial or total, unilateral or bilateral
64856	Suture of major peripheral nerve, arm or leg, except sciatic; including transposition
64892	Nerve graft (includes obtaining graft), single strand, arm or leg; up to 4 cm length
64896	Nerve graft (includes obtaining graft), multiple strands (cable), hand or foot; more than 4 cm length
67900	Repair of brow ptosis (supraciliary, mid-forehead or coronal approach)
92507	Treatment of speech, language, voice, communication, and/or auditory processing disorder; individual
92508	Treatment of speech, language, voice, communication, and/or auditory processing disorder; group, 2 or more individuals

CPT® is a registered trademark of the American Medical Association

Diagnosis Code	Description
F64.0	Transsexualism
F64.1	Dual role transvestism
F64.2	Gender identity disorder of childhood
F64.8	Other gender identity disorders
F64.9	Gender identity disorder, unspecified
Z87.890	Personal history of sex reassignment

Description of Services

Gender Dysphoria is a condition in which there is a marked incongruence between an individual's experienced/expressed/alternative gender and assigned gender (DSM-5). Treatment options include behavioral therapy, psychotherapy, hormone therapy, and surgery for gender transformation. Surgical treatments for Gender Dysphoria may include the following: clitoroplasty, hysterectomy, labiaplasty, mastectomy, orchiectomy, penectomy, phalloplasty or metoidioplasty (alternative to phalloplasty), placement of testicular and/or penile prostheses, salpingo-oophorectomy, scrotoplasty, urethroplasty, urethroplasty, vaginectomy, vaginoplasty and vulvectomy.

Other terms used to describe surgery for Gender Dysphoria include gender affirming surgery, sex transformation surgery, sex change, sex reversal, gender change, transsexual surgery, transgender surgery, and sex reassignment.

Benefit Considerations

Coverage Information

Benefit coverage for health services is determined by the member specific benefit plan document and applicable laws that may require coverage for a specific service.

This medical policy does not apply to fully-insured group plans in California. Refer to the Benefit Interpretation Policy titled [Gender Dysphoria \(Gender Identity Disorder\) Treatment: CA](#).

This Medical Policy does not apply to fully-insured group plans in the state of Washington. Refer to the Benefit Interpretation Policy titled [Gender Dysphoria \(Gender Identity Disorder\) Treatment: WA](#).

Unless otherwise specified, if a plan covers treatment for Gender Dysphoria, coverage includes psychotherapy, cross-sex hormone therapy, puberty suppressing medications and laboratory testing to monitor the safety of hormone therapy. This

benefit also includes certain surgical treatments listed in the [Coverage Rationale](#) section. Refer to the Drug Policy titled [Gonadotropin Releasing Hormone Analogs](#).

Limitations and Exclusions

Certain treatments and services are not covered. Examples include, but are not limited to:

- Treatment received outside of the United States
- Reproduction services, including, but not limited to, sperm preservation in advance of hormone treatment or Gender Dysphoria surgery, cryopreservation of fertilized embryos, oocyte preservation, surrogate parenting, donor eggs, donor sperm and host uterus (see the Reproduction exclusion in the member specific benefit plan document)
- Transportation, meals, lodging or similar expenses
- Cosmetic procedures (refer to the Coverage Determination Guideline titled [Cosmetic and Reconstructive Procedures](#) and the [Coverage Rationale](#) section). See below for additional information on New York fully insured group policies.
- Reversal of genital surgery or reversal of surgery to revise secondary sex characteristics

Coverage does not apply to members who do not meet the indications listed in the [Coverage Rationale](#) section above.

For Fully Insured Group Policies in New York Only

Certain ancillary procedures may be considered cosmetic and not medically necessary when performed as part of surgical treatment for Gender Dysphoria. Clinical review for medical necessity of [ancillary procedures](#) is conducted on a case-by-case basis.

Clinical Evidence

Scandurra et al. (2019) performed a systematic review assessing the health of nonbinary and genderqueer (NBGQ) individuals compared to binary transgender (BT) and cisgender individuals. Eleven studies were included in the review. Results related to the difference in health between NBGQ and BT were mixed, with some finding a better health status while others a worse one. Results related to the differences in health between NBGQ and cisgender individuals highlighted higher health needs in NBGQ individuals compared with cisgender counterparts. The authors noted the need for research expansion in terms of both methodology and research contents.

Wernick et al. (2019) conducted a systematic review of the psychological benefits of gender-affirming surgery. Thirty-three studies were included in the analysis. Overall, most of the studies comparing pre- and post-operative data on quality of life, body image/satisfaction, and overall psychological functioning among individuals with gender dysphoria suggested that gender-affirming surgery leads to multiple, significant psychological benefits. Of the studies comparing psychological well-being between individuals who did or did not undergo surgery, most demonstrated a trend of better mental health among individuals who underwent surgery compared with those who did not. The authors encouraged future research to focus on standardizing the assessment of psychological functioning pre- and post-gender-affirming surgery to gather longitudinal data that will allow for more definitive conclusions to be made about factors that contribute to the psychological benefits of surgery.

Cohen et al. (2019) conducted a systematic review of surgical options and associated outcomes for transmasculine top surgery. Twenty-two studies were included (n=2447). The authors reported that future research is needed to improve patient selection, surgical decision making, and patient-reported outcomes for different chest contouring techniques.

Mahfouda et al. (2019) conducted a systematic review of the available published evidence on gender-affirming cross-sex hormone (CSH) and surgical interventions in transgender children and adolescents, amalgamating findings on mental health outcomes, cognitive and physical effects, side-effects, and safety variables. The small amount of available data suggest that when clearly indicated in accordance with international guidelines, gender-affirming CSHs and chest wall masculinization in transgender males are associated with improvements in mental health and quality of life. Evidence regarding surgical vaginoplasty in transgender females younger than age 18 years remains extremely scarce and conclusions cannot yet be drawn regarding its risks and benefits in this age group. Further research on an international scale is urgently warranted to clarify long-term outcomes on psychological functioning and safety.

A Hayes report on sex reassignment surgery (2018; updated 2021) for the treatment of gender dysphoria made the following conclusions:

- Studies suggest that following sex reassignment surgery, patients reported decreased gender dysphoria and improved body image satisfaction. However, results were mixed regarding effects of sex reassignment surgery on quality of life and psychological symptoms.
- Few studies compare outcomes in patients who received sex reassignment surgery with stand-alone hormone therapy. The results of these studies suggest that sex reassignment surgery may improve gender dysphoria, quality of life, body image and psychological symptoms to a greater extent than hormone therapy alone. However, the results were conflicting.
- Few studies compared outcomes in patients who received different components of sex reassignment surgery. For most outcome measures, there was only a single study available. This evidence is therefore insufficient to support definitive conclusions regarding the comparative effectiveness of different components of sex reassignment surgery for treating gender dysphoria.
- Not all studies reported all outcomes; the following findings therefore do not inform overall incidence of complications. Following sex reassignment surgery, there were very low rates of regret of surgery (0% to 6% per study) and suicide (2% to 3% per study). Complications following sex reassignment surgery were common, and some were serious.

Dreher et al. (2018) conducted a systematic review and meta-analysis to evaluate the epidemiology, presentation, management, and outcomes of neovaginal complications in the MtF transgender reassignment surgery patients. Selected studies reported on 1,684 patients with an overall complication rate of 32.5% and a reoperation rate of 21.7% for non-esthetic reasons. The most common complication was stenosis of the neo-meatus (14.4%). Wound infection was associated with an increased risk of all tissue-healing complications. Use of sacrospinous ligament fixation (SSL) was associated with a significantly decreased risk of prolapse of the neovagina. The authors concluded that gender-affirmation surgery is important in the treatment of gender dysphoric patients, but there is a high complication rate in the reported literature. Variability in technique and complication reporting standards makes it difficult to assess the accurately the current state of MtF gender reassignment surgery. Further research and implementation of standards is necessary to improve patient outcomes.

Manrique et al (2018) conducted a systematic review of retrospective studies on the outcomes of MtF vaginoplasty to minimize surgical complications and improve patient outcomes for transgender patients. Forty-six studies met the authors eligibility criteria. A total of 3716 cases were analyzed. The results showed the overall incidence of complications as follows: 2% fistula, 14% stenosis and strictures, 1% tissue necrosis, and 4% prolapse. Patient-reported outcomes included a satisfaction rate of 93% with overall results, 87% with functional outcomes, and 90% with esthetic outcomes. Ability to have orgasm was reported in 70% of patients. The regret rate was 1%. The authors concluded that multiple surgical techniques have demonstrated safe and reliable means of MtF vaginoplasty with low overall complication rates and with a significant improvement in the patient's quality of life. Studies using different techniques in a similar population and standardized patient-reported outcomes are required to further analyze outcomes among the different procedures and to establish best-practice guidelines.

Van Damme et al. (2017) conducted a systematic review of the effectiveness of pitch-raising surgery performed in MtF transsexuals. Twenty studies were included: eight using cricothyroid approximation, six using anterior glottal web formation and six using other surgery types or a combination of surgical techniques. A substantial rise in postoperative frequency was identified. The majority of patients seemed satisfied with the outcome. However, none of the studies used a control group and randomization process. Further investigation regarding long-term results using a stronger study design is necessary.

Gaither et al. (2017) retrospectively reviewed the records of 330 MtF patients from 2011 to 2015, to assess surgical complications related to primary penile inversion vaginoplasty. Complications included granulation tissue, vaginal pain, wound separation, labial asymmetry, vaginal stenosis, fistula formation, urinary symptoms including spraying stream or dribbling, infection, vaginal fissure or vaginal bleeding. Median age at surgery was 35 years, and median follow-up in all patients was 3 months. The results showed that 95 of the patients presented with a postoperative complication with the median time to a complication being 4.4 months. Rectovaginal fistulas developed in 3 patients, and 30 patients required a second operation. Age, body mass index and hormone replacement therapy were not associated with complications. The authors concluded that penile inversion vaginoplasty is a relatively safe procedure. Most complications due to this surgery develop within the first 4 months postoperatively. Age, body mass index and hormone replacement therapy are not associated with complications and, thus, they should not dictate the timing of surgery.

An ECRI special report systematically reviewed the clinical literature to assess the efficacy of treatments for gender dysphoria. The authors identified limited evidence from mostly low-quality retrospective studies. Evidence on gender reassignment surgery was mostly limited to evaluations of MtF individuals undergoing vaginoplasty, facial feminization surgery and breast augmentation. Outcomes included mortality, patient satisfaction, physical well-being, psychological-related outcomes, quality of life, sexual-related outcomes, suicide and adverse events. Concluding remarks included the need for standardized protocols and prospective studies using standardized measures for correct interpretation and comparability of data (ECRI, 2016).

Morrison et al. (2016) conducted a systematic review of the facial feminization surgery literature. Fifteen studies were included, all of which were either retrospective or case series/reports. The studies covered a variety of facial feminization procedures. A total of 1121 patients underwent facial feminization surgery, with seven complications reported, although many studies did not explicitly comment on complications. Satisfaction was high, although most studies did not use validated or quantified approaches to address satisfaction. The authors noted that further studies are needed to better compare different techniques to more robustly establish best practices. Prospective studies and patient-reported outcomes are needed to establish quality of life outcomes for patients.

Frey et al. (2016) conducted a systematic review of metoidioplasty and radial forearm flap phalloplasty (RFFP) in FtM transgender genital reconstruction. Eighteen studies were included: 7 for metoidioplasty and 11 for RFFP. The quality of evidence was low to very low for all included studies. In studies examining metoidioplasty, the average study size and length of follow-up were 54 patients and 4.6 years, respectively (1 study did not report [NR]). Eighty-eight percent underwent a single-stage reconstruction, 87% reported an aesthetic neophallus (3 NR) and 100% reported erogenous sensation (2 NR). Fifty-one percent of patients reported successful intercourse (3 NR) and 89% of patients achieved standing micturition (3 NR). In studies examining RFFP, the average study size and follow-up were 60.4 patients and 6.23 years, respectively (6 NR). No patients underwent single-stage reconstructions (8 NR). Seventy percent of patients reported a satisfactorily aesthetic neophallus (4 NR) and 69% reported erogenous sensation (6 NR). Forty-three percent reported successful penetration of partner during intercourse (6 NR) and 89% achieved standing micturition (6 NR). Compared with RFFP, metoidioplasty was significantly more likely to be completed in a single stage, have an aesthetic result, maintain erogenous sensation, achieve standing micturition and have a lower overall complication rate. The authors reported that, although the current literature suggests that metoidioplasty is more likely to yield an "ideal" neophallus compared with RFFP, any conclusion is severely limited by the low quality of available evidence.

Using a retrospective chart review, Buncamper et al. (2016) assessed surgical outcome after penile inversion vaginoplasty. Outcome measures were intraoperative and postoperative complications, reoperations, secondary surgical procedures and possible risk factors. Of 475 patients who underwent the procedure, 405 did not have additional full-thickness skin grafts while 70 did have grafts. Median follow-up was 7.8 years. The most frequently observed intraoperative complication was rectal injury (2.3 percent). Short-term postoperative bleeding that required transfusion (4.8 percent), reoperation (1.5 percent) or both (0.4 percent) occurred in some cases. Major complications were three (0.6 percent) rectovaginal fistulas, which were successfully treated. Revision vaginoplasty was performed in 14 patients (2.9 percent). Comorbid diabetes was associated with a higher risk of local infection, and use of psychotropic medication predisposed to postoperative urinary retention. Successful vaginal construction without the need for secondary functional reoperations was achieved in the majority of patients.

Bouman et al. (2016) prospectively assessed surgical outcomes of primary total laparoscopic sigmoid vaginoplasty in 42 transgender women with penoscrotal hypoplasia. Mean follow-up time was 3.2 ± 2.1 years. The mean operative duration was 210 ± 44 minutes. There were no conversions to laparotomy. One rectal perforation was recognized during surgery and immediately oversewn without long-term consequences. The mean length of hospitalization was 5.7 ± 1.1 days. One patient died as a result of an extended-spectrum beta-lactamase-positive necrotizing fasciitis leading to septic shock, with multiorgan failure. Direct postoperative complications that needed laparoscopic reoperation occurred in three cases (7.1 percent). In seven cases (17.1 percent), long-term complications needed a secondary correction. After 1 year, all patients had a functional neovagina with a mean depth of 16.3 ± 1.5 cm.

Despite the significant increase in genital gender affirming surgery (GAS) within the past 50 years, there is limited data regarding hair removal practices in preparation for genital GAS. Genital GAS involves reconstruction of the genitals to match a patient's identified sex. The use of hair-bearing flaps in this procedure may result in postoperative intra-vaginal and intra-urethral hair growth and associated complications, including lower satisfaction with genital GAS. In 2016, Zhang et al. conducted a literature review, recommendations from experience, and a practical laser hair removal (LHR) approach to hair removal prior to genital GAS.

Horbach et al. (2015) conducted a systematic review of vaginoplasty techniques in MtF individuals with gender dysphoria. Twenty-six studies were included (mostly retrospective case series of low to intermediate quality). Outcome of the penile skin inversion technique was reported in 1,461 patients and bowel vaginoplasty in 102 patients. Neovaginal stenosis was the most frequent complication in both techniques. Sexual function and patient satisfaction were overall acceptable, but many different outcome measures were used. Quality of life was only reported in one study. Comparison between techniques was difficult due to the lack of standardization. The authors concluded that the penile skin inversion technique is the most researched surgical procedure. Outcome of bowel vaginoplasty has been reported less frequently but does not seem to be inferior. The available literature is heterogeneous in patient groups, surgical procedure, outcome measurement tools and follow-up. There is a need for prospective studies with standardized surgical procedures, larger patient groups and longer follow-up periods. Uniformity in outcome measurement tools such as validated questionnaires and scores for sexual function and quality of life is mandatory for correct interpretation and comparability of data.

Bouman et al. (2014) conducted a systematic review of surgical techniques and clinical outcomes of intestinal vaginoplasty. Twenty-one studies were included (n=894). All studies had a retrospective design and were of low quality. Prevalence and severity of procedure-related complications were low. The main postoperative complication was introital stenosis, necessitating surgical correction in 4.1% of sigmoid-derived and 1.2% of ileum-derived vaginoplasties. Neither diversion colitis nor cancer was reported. Sexual satisfaction rate was high, but standardized questionnaires were rarely used. Quality of life was not reported. The authors concluded that prospective studies, using standardized measures and questionnaires, are warranted to assess functional outcomes and quality of life.

Djordjevic et al. (2013) evaluated 207 patients who underwent single-stage metoidioplasty, comparing two different surgical techniques of urethral lengthening. The procedure included lengthening and straightening of the clitoris, urethral reconstruction and scrotoplasty with implantation of testicular prostheses. Buccal mucosa graft was used in all cases for dorsal urethral plate formation and joined with one of the two different flaps: longitudinal dorsal clitoral skin flap (n=49) (group 1) and labia minora flap (n=158) (group 2). The median follow-up was 39 months. The total length of reconstructed urethra ranged from 9.1 to 12.3 cm in group 1 and from 9.4 to 14.2 cm in group 2. Voiding while standing was significantly better in group 2 (93%) than in group 1 (87.82%). Urethral fistula occurred in 16 patients in both groups. Overall satisfaction was noted in 193 patients. The authors concluded that combined buccal mucosa graft and labia minora flap was the method of choice for urethroplasty in metoidioplasty, minimizing postoperative complications.

In a non-randomized study, Dhejne et al. (2011) evaluated mortality, morbidity and criminal rates after gender reassignment surgery in 324 individuals (MtF n=191; FtM n=133). Random population controls (10:1) were matched by birth year and birth sex or reassigned final sex. The authors reported substantially higher rates of overall mortality, death from cardiovascular disease and suicide, suicide attempts and psychiatric hospitalizations in sex-reassigned individuals (both MtF/FtM) compared to a healthy control population. FtMs had a higher risk for criminal convictions.

Murad et al. (2010) conducted a systematic review to evaluate the effects of hormone therapy on patients undergoing gender reassignment surgery. The authors identified 28 eligible studies, all of which were observational and most lacked controls. These studies enrolled 1833 participants with gender dysphoria (1093 MtF; 801 FtM). After gender reassignment surgery, individuals reported improvement in gender dysphoria (80%), psychological symptoms (78%), sexual function (72%) and quality of life (80%). The authors concluded that very low quality evidence suggests that gender reassignment, that includes hormonal interventions, is likely to improve gender dysphoria, psychological functioning and comorbidities, sexual function and overall quality of life.

Sutcliffe et al. (2009) systematically reviewed five individual procedures for MtF gender reassignment surgery: clitoroplasty, labiaplasty, orchiectomy, penectomy and vaginoplasty. Further evaluations were made of eight surgical procedures for FtM gender reassignment surgery: hysterectomy, mastectomy, metoidioplasty, phalloplasty, salpingo-oophorectomy, scrotoplasty/placement of testicular prostheses, urethroplasty and vaginectomy. Eighty-two published studies (38 MtF; 44 FtM) were included in the review. For MtF procedures, the authors found no evidence that met the inclusion criteria concerning labiaplasty, penectomy or orchiectomy. A large amount of evidence was available concerning vaginoplasty and clitoroplasty procedures. The authors reported that the evidence concerning gender reassignment surgery in both MtF and FtM individuals with gender dysphoria has several limitations including lack of controlled studies, lack of prospective data, high loss to follow-up and lack of validated assessment measures. Some satisfactory outcomes were reported, but the magnitude of benefit and harm for individual surgical procedures cannot be estimated accurately using the current available evidence.

World Professional Association for Transgender Health (WPATH)

WPATH, formerly known as the Harry Benjamin International Gender Dysphoria Association, is an advocacy group devoted to transgender health. WPATH guidelines (2012) present eligibility and readiness criteria for transition-related treatment, as well as competencies of health care providers.

WPATH describes the transition from one gender to another in the following three stages:

- Living in the gender role consistent with gender identity
- The use of cross-sex hormone therapy after living in the new gender role for a least three months
- Gender-affirmation surgery after living in the new gender role and using hormonal therapy for at least 12 months

Clinical Practice Guidelines

American Academy of Pediatrics (AAP)

In a 2018 policy statement entitled *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, the AAP states the following regarding surgery: Surgical approaches may be used to feminize or masculinize features, such as hair distribution, chest, or genitalia, and may include removal of internal organs, such as ovaries or the uterus (affecting fertility). These changes are irreversible. Although current protocols typically reserve surgical interventions for adults, they are occasionally pursued during adolescence on a case-by case basis, considering the necessity and benefit to the adolescent's overall health and often including multidisciplinary input from medical, mental health, and surgical providers as well as from the adolescent and family.

American College of Obstetrics and Gynecology (ACOG)

An ACOG committee opinion (2021) provides guidance on health care for transgender and gender diverse individuals. The document does not make specific recommendations regarding surgery but does provide an overview of surgical procedures and education for clinicians who care for transgender patients before and after surgery.

Endocrine Society

Endocrine Society practice guidelines (Hembree et al., 2017) addressing endocrine treatment of gender-dysphoric/gender-incongruent persons makes the following recommendations regarding surgery for sex reassignment and gender confirmation:

- Suggest that clinicians delay gender-affirming genital surgery involving gonadectomy and/or hysterectomy until the patient is at least 18 years old or legal age of majority in his or her country (Recommendation based on low quality evidence).
- A patient pursue genital gender-affirming surgery only after the mental health practitioner (MHP) and the clinician responsible for endocrine transition therapy both agree that surgery is medically necessary and would benefit the patient's overall health and/or well-being (Strong recommendation based on low quality evidence).
- Surgery is recommended only after completion of at least one year of consistent and compliant hormone treatment unless hormone therapy is not desired or medically contraindicated (Ungraded Good Practice Statement).
- The physician responsible for endocrine treatment medically clears individual for surgery and collaborates with the surgeon regarding hormone use during and after surgery (Ungraded Good Practice Statement).
- Recommend that clinicians refer hormone treated transgender individuals for genital surgery when (Strong recommendation based on very low quality evidence):
 - The individual has had a satisfactory social role change
 - The individual is satisfied about the hormonal effects
 - The individual desires definitive surgical changes
- Suggest that clinicians determine the timing of breast surgery for transgender males based upon the physical and mental health status of the individual. There is insufficient evidence to recommend a specific age requirement (Recommendation based on very low quality evidence)

University of California, San Francisco (UCSF) Center of Excellence for Transgender Health

The UCSF Center of Excellence evidence-based guidelines for the primary and gender-affirming care of transgender and gender nonbinary people address various surgical procedures, including risks, complications, approaches and perioperative and postoperative care (Deutsch, 2016).

U.S. Food and Drug Administration (FDA)

This section is to be used for informational purposes only. FDA approval alone is not a basis for coverage.

Gender transformation surgeries are procedures, and therefore, not subject to FDA regulation. However, medical devices, drugs, biologics, or tests used as a part of these procedures may be subject to FDA regulation. See the following website to search by product name. Available at: <http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfPMN/pmn.cfm>. (Accessed August 24, 2021)

References

- American Academy of Pediatrics. Policy Statement. Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents. October 2018.
- American College of Obstetricians and Gynecologists (ACOG). Committee Opinion #823. Health care for transgender and gender diverse individuals. *Obstet Gynecol*. 2021 Mar 1;137(3):e75-e88.
- American Psychological Association. Report of the task force on gender identity and gender variance. Washington, DC: 2009.
- American Psychological Association. Report of the task force on appropriate therapeutic responses to sexual orientation. Washington, DC: 2009.
- American Psychological Association. Guidelines for psychological practice with transgender and gender nonconforming people. *Am Psychol*. 2015 Dec;70(9):832-64.
- Bouman MB, van der Sluis WB, Buncamper ME, et al. Primary total laparoscopic sigmoid vaginoplasty in transgender women with penoscrotal hypoplasia: a prospective cohort study of surgical outcomes and follow-up of 42 patients. *Plast Reconstr Surg*. 2016 Oct;138(4):614e-23e.
- Bouman MB, van Zeijl MC, Buncamper ME, et al. Intestinal vaginoplasty revisited: a review of surgical techniques, complications, and sexual function. *J Sex Med*. 2014 Jul;11(7):1835-47.
- Buncamper ME, van der Sluis WB, van der Pas RS, et al. Surgical outcome after penile inversion vaginoplasty: a retrospective study of 475 transgender women. *Plast Reconstr Surg*. 2016 Nov;138(5):999-1007.
- Byne W, Bradley SJ, Coleman E, et al. Report of the American Psychiatric Association task force on treatment of gender identity disorder. *Am J Psychiatry*. 2012 Aug;169(8):875-6.
- Cohen WA, Shah NR, Iwanicki M, et al. Female-to-male transgender chest contouring: a systematic review of outcomes and knowledge gaps. *Ann Plast Surg*. 2019 Nov;83(5):589-593.
- Deutsch MB, editor. Guidelines for the primary and gender-affirming care of transgender and gender nonbinary people. 2nd edition. San Francisco, CA: UCSF Transgender Care; 2016.
- Dhejne C, Lichtenstein P, Boman M, et al. Long-term follow-up of transsexual persons undergoing sex reassignment surgery: cohort study in Sweden. *PLoS One*. 2011 Feb 22;6(2):e16885.
- Djordjevic ML, Bizic MR. Comparison of two different methods for urethral lengthening in female to male (metoidioplasty) surgery. *J Sex Med*. 2013 May;10(5):1431-8.
- Diagnostic and statistical manual of mental disorders (5th ed.). 2013. Washington, DC: American Psychiatric Association.
- Dreher PC, Edwards D, Hager S, et al. Complications of the neovagina in male-to-female transgender surgery: A systematic review and meta-analysis with discussion of management. *Clin Anat*. 2018 Mar;31(2):191-199.
- ECRI Institute. Special Report. Gender dysphoria. January 2016.
- Frey JD, Poudrier G, Chiodo MV, Hazen A. A systematic review of metoidioplasty and radial forearm flap phalloplasty in female-to-male transgender genital reconstruction: is the 'ideal' neophallus an achievable goal? *Plast Reconstr Surg Glob Open*. 2016 Dec 23;4(12):e1131.
- Gaither TW, Awad MA, Osterberg EC, et al. Postoperative Complications following Primary Penile Inversion Vaginoplasty among 330 Male-to-Female Transgender Patients. *J Urol*. 2018;199(3):760-765.
- Gooren LJ. Clinical practice. Care of transsexual persons. *N Engl J Med*. 2011 Mar 31;364(13):1251-7.

Hayes, Inc. Hayes Directory Report. Sex reassignment surgery for the treatment of gender dysphoria. Lansdale, PA: Hayes, Inc.; August 2018; updated July 2021.

Hayes, Inc. Hayes Evidence Analysis Research Brief. Reversal of gender reassignment surgery. Lansdale, PA: Hayes, Inc.; June 2020. Archived July 2021.

Hembree WC, Cohen-Kettenis PT, Gooren L, et al. Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline. *J Clin Endocrinol Metab.* 2017 Nov 1;102(11):3869-3903.

<https://academic.oup.com/jcem/article/102/11/3869/4157558>.

Horbach SE, Bouman MB, Smit JM, et al. Outcome of vaginoplasty in male-to-female transgenders: a systematic review of surgical techniques. *J Sex Med.* 2015 Jun;12(6):1499-512.

Kanhai RC, Hage JJ, Mulder JW. Long-term outcome of augmentation mammoplasty in male-to-female transsexuals: a questionnaire survey of 107 patients. *Br J Plast Surg.* 2000 Apr;53(3):209-11.

Kuhn A, Bodmer C, Stadlmayr W, Kuhn P, Mueller MD, Birkhäuser M. Quality of life 15 years after sex reassignment surgery for transsexualism. *Fertil Steril.* 2009 Nov;92(5):1685-1689.e3.

Mahfouda S, Moore JK, Siafarikas A, Hewitt T, Ganti U, Lin A, Zepf FD. Gender-affirming hormones and surgery in transgender children and adolescents. *Lancet Diabetes Endocrinol.* 2019 Jun;7(6):484-498.

Manrique OJ, Adabi K, Martinez-Jorge J, et al. Complications and Patient-Reported Outcomes in Male-to-Female Vaginoplasty-Where We Are Today: A Systematic Review and Meta-Analysis. *Ann Plast Surg.* 2018 Jun;80(6):684-691.

Morrison SD, Vyas KS, Motakef S, et al. Facial feminization: systematic review of the literature. *Plast Reconstr Surg.* 2016 Jun;137(6):1759-70.

Murad MH, Elamin MB, Garcia MZ, et al. Hormonal therapy and sex reassignment: a systematic review and meta-analysis of quality of life and psychosocial outcomes. *Clin Endocrinol (Oxf).* 2010 Feb;72(2):214-31.

Nondiscrimination in Health Programs and Activities, 81 Fed. Reg. 31376 (May 18, 2016) (codified at 45 C.F.R. pt. 92). Sutcliffe PA, Dixon S, Akehurst RL, et al. Evaluation of surgical procedures for sex reassignment: a systematic review. *J Plast Reconstr Aesthet Surg.* 2009 Mar;62(3):294-306; discussion 306-8.

Scandurra C, Mezza F, Maldonato NM, et al. Health of non-binary and genderqueer people: a systematic review. *Front Psychol.* 2019 Jun 25;10:1453.

Van Damme S, Cosyns M, Deman S, et al. The effectiveness of pitch-raising surgery in male-to-female transsexuals: a systematic review. *J Voice.* 2017 Mar;31(2):244.e1-244.e5.

Wernick JA, Busa S, Matouk K, et al. A systematic review of the psychological benefits of gender-affirming surgery. *Urol Clin North Am.* 2019 Nov;46(4):475-486.

World Professional Association for Transgender Health (WPATH). Standards of care for the health of transsexual, transgender and gender nonconforming people. 7th edition. 2012.

Zhang WR, Garrett GL, Arron ST, Garcia MM. Laser hair removal for genital gender affirming surgery. *Transl Androl Urol.* 2016 Jun;5(3):381-7.

Policy History/Revision Information

Date	Summary of Changes
11/01/2021	<p>Documentation Requirements</p> <ul style="list-style-type: none">Updated list of applicable CPT codes with associated documentation requirements; added 15878, 15879, 54400, 54401, and 54405 <p>Supporting Information</p> <ul style="list-style-type: none">Archived previous policy version 2021T0580K

Instructions for Use

This Medical Policy provides assistance in interpreting UnitedHealthcare standard benefit plans. When deciding coverage, the member specific benefit plan document must be referenced as the terms of the member specific benefit plan may differ from the standard plan. In the event of a conflict, the member specific benefit plan document governs. Before using this policy, please check the member specific benefit plan document and any applicable federal or state mandates. UnitedHealthcare reserves the right to modify its Policies and Guidelines as necessary. This Medical Policy is provided for informational purposes. It does not constitute medical advice.

This Medical Policy may also be applied to Medicare Advantage plans in certain instances. In the absence of a Medicare National Coverage Determination (NCD), Local Coverage Determination (LCD), or other Medicare coverage guidance, CMS allows a Medicare Advantage Organization (MAO) to create its own coverage determinations, using objective evidence-based rationale relying on authoritative evidence (Medicare IOM Pub. No. 100-16, Ch. 4, §90.5).

UnitedHealthcare may also use tools developed by third parties, such as the InterQual[®] criteria, to assist us in administering health benefits. UnitedHealthcare Medical Policies are intended to be used in connection with the independent professional medical judgment of a qualified health care provider and do not constitute the practice of medicine or medical advice.

From: Lopez, Onelio (HHS/OCR) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=USER541E91E4 <Onelio.Lopez@HHS.GOV>

Pino, Lisa (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=90674352c007441b96f0f199cdd550c2-Pino, Lisa <Lisa.Pino@hhs.gov>;

Frohboese, Robinsue (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=57b8853f66da4cb99818c9e2632f77f8-Frohboese, <Robinsue.Frohboese@HHS.GOV>;

Noonan, Timothy (OS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=12eb3ee8ced84516902ac690558270ef-Noonan, Tim <Timothy.Noonan@hhs.gov>;

Worley, Michael (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4d12e79c274c4d3b83913b1260d2da4b-Worley, Mic <Michael.Worley@hhs.gov>;

Barron, Pamela (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d55f83440f074842ac94e1f27f11fa9e-Barron, Pam <Pamela.Barron@hhs.gov>;

Novy, Steve (OS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=caf595a22bcb42b5b1dbc055a1a52b65-Novy, Steve <Steve.Novy@hhs.gov>;

Perez, Luis (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eb4f62687d764a40a5c4e52f94b8354a-Perez, Luis <Luis.Perez@hhs.gov>;

Jee, Lauren (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dc5a273e16824884903f0d2afc8cb225-Jee, Lauren <Lauren.Jee1@hhs.gov>;

Shah, Babubhai Padma (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a0ff2101f0984327b01c4518b783027a-Shah, Padma <Padma.Shah@hhs.gov>;

Albrecht, Sarah B. (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=usera956839a <Sarah.Albrecht@hhs.gov>;

Hyams, David (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d894f7b1a28749e8ba7ec5eeba49d75f-David.Hyams <David.Hyams@hhs.gov>;

To: Sanches, Linda (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9f99a3b8864d430eabadbfc7fcb12a86-Sanches, Li <Linda.Sanches@HHS.GOV>;

Gordon-Nguyen, Marissa (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=df972908cd4c4422945243f7db218a8f-Gordon-Nguy <Marissa.Gordon@hhs.gov>;

Mosley-Day, Serena (OS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d0320fcb8475467087746c0b8947d140-Mosley-Day, <Serena.Mosley-Day@hhs.gov>;

Heesters, Nicholas (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9583a7d0912f437e9d31de3c3caac8e3-Heesters, N <Nicholas.Heesters@hhs.gov>;

Montoya, Luben (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user4a33cd57 <Luben.Montoya@hhs.gov>;

Johnson, Kenneth D. (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user3825b5f1 <kenneth.d.johnson@hhs.gov>;

Carter, Carla (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user71ef86df <Carla.Carter@HHS.GOV>;

Thomas, James (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9607ef3400034a02a7c0ae79187ee284-Thomas, Jam <James.Thomas@hhs.gov>;

Christensen, David (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8d8a547fcd594ec98daa04d065357d77-Christensen <David.Christensen@hhs.gov>;

Rothschild, Feride (HHS/OS/OGA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fa39610c85c24ca2bf49c9a5ce055f30-Rothschild, <Feride.Rothschild@hhs.gov>;

Heesters, Nicholas (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9583a7d0912f437e9d31de3c3caac8e3-Heesters, N <Nicholas.Heesters@hhs.gov>;

Starks, Vadrienne (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group

(FYDIBOHF23SPDLT)/cn=Recipients/cn=38efe46883b2447688c8fb466035de7b-Starks, Vad
<Vadrienne.Starks@hhs.gov>;
Blakeley, Alec (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=00847f94a9c54848b1a0763688402505-Blakeley, A
<Alec.Blakeley@hhs.gov>;
Gerald, Mary (HHS/OCR) (CTR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=5366970ff15d4fb78f241c897b62845d-Gerald, Mar
<Mary.Gerald@HHS.GOV>;
Henderson, Harold (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=cc949f2d23c043ecb03e6f9c21684f25-Henderson,
<Harold.Henderson@hhs.gov>;
Roman, David (OS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=user5d5a5775 <David.Roman@hhs.gov>;
OS - OCR REG MANAGRS /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=0b199d72b3a8465fb89b6c5cdebe7a32-OCRREGMGRS.
<OCRREGMGRS@hhs.gov>;
OS - OCR Deputy Reg Managers /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=21327c46b7a3427b9916e4d8ce947a26-OCRDEPREG.O
<OCRDEPREG@hhs.gov>;
Kelly, Genevieve (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=1d5689fc09ae4cbe85f58683ef3b521e-Kelly, Gene
<Genevieve.Kelly@hhs.gov>;
Shieh, Daniel (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=3f0b2318adca4e3284be813503205b01-Shieh, Dani
<Daniel.Shieh@hhs.gov>;
Brett-Turner, Jacob (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=03fbc6fd57da4e1f97a2a7ad8b012e79-Brett-Turne
<Jacob.Brett-turner@hhs.gov>;
OS - OCR CR /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=21bdd670bf344fcd950b406cb5cb9aa1-OCROPO.OS-N
<OCROPO@hhs.gov>

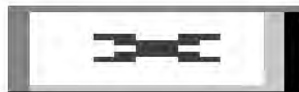
CC: Seeger, Rachel (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=3090ef9b170d45969add4ff475a95583-Rachel Seeg
<Rachel.Seeger@hhs.gov>

Subject: Daily Communications Update - 03/16/2022

Date: 2022/03/16 13:19:31

Priority: Normal

Type: Note



DAILY COMMUNICATIONS UPDATE
US DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS
March 16, 2022

OCR IN THE NEWS

CIVIL RIGHTS:

- Federal agency says it will work to ensure access to care for transgender minors: OCR for HHS has issued a notice that it will ensure that transgender youth and their families have access to medical care that faces challenges in some states, including Alabama. "[HHS] stands with transgender and gender-nonconforming youth and their families—and the significant majority of expert medical associations—in unequivocally stating that gender-affirming care for minors, when medically appropriate and necessary, improve their physical and mental health," the March 2 notice says. "Attempts to restrict, challenge, or falsely characterize this potentially lifesaving care as abuse is dangerous," the notice says. "Such attempts block parents from making critical health care decisions for their children, create a chilling effect on health care providers who are necessary to provide care for these youth, and ultimately negatively impact the health and well-being of transgender and gender-nonconforming youth. [Advance Local Media LLC, 03/15/2022]
- Court refuses to order Arizona to pay for transgender teen's surgery: A federal appeals court has refused to order Arizona's Medicaid program to pay for the transition surgery of a transgender teen who claimed the state's failure to do so amounted to sex discrimination. The 9th US Circuit Court of Appeals ruling upheld a lower court that said the 15-year-old had not shown that male chest reconstruction surgery was "medically necessary" and did not note that AHCCCS does pay for gender dysphoria counseling and hormone therapy. But the appeals court did not rule on whether the AHCCCS policy violates the teen's civil rights. [AZ Central News, 03/15/2022]
- Confusion And Terror Reign In Texas For Families Of Trans Teenagers: Amid unprecedented attacks, including harassment from state officials, many families are dreading the next knock on the door. Groups such as the AMA have spoken out against states that have sought to block the administration of affirming health care practices like puberty blockers. HHS Secretary Xavier Becerra expressed similar views earlier this month, calling Abbott's order "discriminatory and unconscionable" and "clearly dangerous to the health of transgender youth in Texas." [Huffington Post, 03/15/2022]

CONSCIENCE AND RELIGIOUS FREEDOM:

HIPAA:

-

STORIES OF INTEREST TO OCR

CIVIL RIGHTS:

- D.C.'s Second Attempt At An Online Benefits Portal Still Has Incomplete Translation Options. Fixes Promised This Spring: People who don't speak or read English are having difficulty accessing District Direct, the D.C. government's new benefits app and online portal, because it is not fully available in any language other than English. Applicants going to apply for benefits in-person face a 2-3hr wait. Some people have been stood up by their D.C.-provided interpreters; some have felt forced to pay for their own interpreter or relied on a stranger at the service center, and others report that they feel looked down on because their primary language isn't English. [Dcist.com: 03/14/2022]
- Louisiana lawmaker proposes ban on transgender health care for minors: House Bill 570 calls this proposal the SAFE Act, short for Saving Adolescents From Experimentation. It would prohibit a wide swath of medical services – from hair transplants to liposuction and many other treatments – for anyone under 18 if their goal is to promote the development of feminizing or

masculinizing features in the opposite sex. The Louisiana Illuminator first published this story. [View the original coverage here.](#) [WWNO 89.9, 03/15/2022]

- [Watchdog group again sues mental health agency](#): Disability Rights Mississippi, a nonprofit organization that advocates for Mississippians with disabilities, filed its second lawsuit this year against the state DMH after the agency denied records requests related to an investigation of the treatment of individuals with mental illness in the forensic unit of Mississippi State Hospital. [Mississippi Today, 03/16/2022]
- [Protest over infant's care prompts lockdown at Idaho hospital](#): St. Luke's Hospital in Boise, Idaho, went on lockdown and diverted ambulances in response to protests about an infant being treated at the facility according to NBC affiliate KTVB. The infant was first treated at St. Luke's Hospital earlier this month for severe malnourishment and discharged on March 4. Police placed the child in the Idaho Department of Health and Welfare custody after his parents failed to bring him to several follow-up appointments. Protesters allege parental rights have been violated and call for the infant to be returned. View the full article [here](#). [Becker's Hospital Review, 03/16/2022]
- [Immigrant Patients Allege Discriminatory Treatment At East Boston Health Center](#): Civil and immigrant rights advocates asked for a state investigation into the East Boston Neighborhood Health Center over allegations that immigrant patients received discriminatory medical treatment. Advocacy groups identified nine cases going back to 2018. Patients, most of them immigrant women and many of whom receive health insurance through MassHealth, claim they did not receive the medical care they and their families deserved at the health center, sometimes leaving them without proper treatment for months. In one case, an infant died the day after being sent home by the health center. [Boston Globe, 03/15/2022]
- [New Law Aims To Expand Care For Sex Assault Victims, Including Access To Rape Kits](#): A nearly decade-long fight for better access to care for rape victims is now law. On Tuesday, President Biden signed the Violence Against Women Act, which includes provisions of a bipartisan bill to expand access to care for victims of sexual assault. [CBS News, 03/15/2022]
- [Doctors Often Turn To Google Translate. They Want A Better Option](#): The patient had just undergone a cesarean section and now was struggling to put words to her pain in her native Taiwanese. The physician making rounds was used to communicating with patients who didn't speak English as a first language at her county hospital in Phoenix. But this time, calling in an interpreter by phone wasn't working. "The service was not good," she said — and soon, she realized the patient and the interpreter weren't even speaking the same dialect. "It was difficult to communicate, even with the interpreter." So, she turned to a familiar tool: Google Translate. Typing translations back and forth — Taiwanese to English, English to Taiwanese — she and the patient slowly came to an understanding with the help of the interpreter still on the line. [Stat, 03/16/2022]
- [Groups Offer Help with Sewer Problems in Lowndes Co.](#): Sewage problems in Lowndes County have been well-documented in recent years. Now, there's an effort underway to address the problem — one house at a time. The project's goal is to install new sanitation systems in 175 Lowndes County homes. The work is done at no cost to homeowners. [Alabama News Network, 03/16/2022]

CONSCIENCE AND RELIGIOUS FREEDOM:

HIPAA:

- Tennessee Children's hospital hit by IT security issue: Knoxville-based East Tennessee Children's Hospital warned patients on March 15 that an unspecified information technology security issue has affected the hospital. Officials said they are trying to resolve the security issue, which is ongoing. No further details have been released. [Becker's Health IT, 03/15/2022]
- Class Action Filed in Logan Health Breach Affecting 214,000: A proposed class-action lawsuit against a Montana-based healthcare organization in the wake of a recent hacking incident affecting nearly 214,000 individuals - the entity's second significant breach since 2019 - alleges, among other claims, that the entity was negligent when it failed to protect sensitive data. The lawsuit was filed against Logan Health Medical Center - formerly called Kalispell Regional Healthcare - on March 9 in a Montana federal court by patient Allison Smeltz on behalf of herself and others similarly affected by a hacking incident discovered in November 2021. [ISMG, 03/15/2022]
- DOJ Settles First Case Under Civil Cyber-Fraud Initiative: Comprehensive Health Services (CHS) agreed to a \$930,000 settlement to resolve False Claims Act allegations, signifying DOJ's first False Claims Act settlement since launching its Civil Cyber-Fraud Initiative in October. CHS is a government-contracted provider of global medical services. Between 2012 and 2019, the US alleged that CHS failed to disclose to the State Department that it had not consistently stored patients' medical records on a secure EMR system. [Health IT Security, 03/16/2022]

Sender: Lopez, Onelio (HHS/OCR) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=USER541E91E4 <Onelio.Lopez@HHS.GOV>

Pino, Lisa (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=90674352c007441b96f0f199cdd550c2-Pino, Lisa <Lisa.Pino@hhs.gov>;
 Frohboese, Robinsue (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=57b8853f66da4cb99818c9e2632f77f8-Frohboese, <Robinsue.Frohboese@HHS.GOV>;
 Noonan, Timothy (OS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=12eb3ee8ced84516902ac690558270ef-Noonan, Tim <Timothy.Noonan@hhs.gov>;
 Worley, Michael (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4d12e79c274c4d3b83913b1260d2da4b-Worley, Mic <Michael.Worley@hhs.gov>;
 Barron, Pamela (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d55f83440f074842ac94e1f27f11fa9e-Barron, Pam <Pamela.Barron@hhs.gov>;
 Novy, Steve (OS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=caf595a22bcb42b5b1dbc055a1a52b65-Novy, Steve <Steve.Novy@hhs.gov>;

Recipient: Perez, Luis (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eb4f62687d764a40a5c4e52f94b8354a-Perez, Luis <Luis.Perez@hhs.gov>;
 Jee, Lauren (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dc5a273e16824884903f0d2afc8cb225-Jee, Lauren <Lauren.Jee1@hhs.gov>;
 Shah, Babubhai Padma (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a0ff2101f0984327b01c4518b783027a-Shah, Padma <Padma.Shah@hhs.gov>;
 Albrecht, Sarah B. (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=usera956839a <Sarah.Albrecht@hhs.gov>;
 Hyams, David (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d894f7b1a28749e8ba7ec5eeba49d75f-David.Hyams <David.Hyams@hhs.gov>;
 Sanches, Linda (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9f99a3b8864d430eabadbfc7fcb12a86-Sanches, Li <Linda.Sanches@HHS.GOV>;
 Gordon-Nguyen, Marissa (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group

(FYDIBOHF23SPDLT)/cn=Recipients/cn=df972908cd4c4422945243f7db218a8f-Gordon-Nguy
<Marissa.Gordon@hhs.gov>;
Mosley-Day, Serena (OS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=d0320fcb8475467087746c0b8947d140-Mosley-Day,
<Serena.Mosley-Day@hhs.gov>;
Heesters, Nicholas (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=9583a7d0912f437e9d31de3c3caac8e3-Heesters, N
<Nicholas.Heesters@hhs.gov>;
Montoya, Luben (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=user4a33cd57 <Luben.Montoya@hhs.gov>;
Johnson, Kenneth D. (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=user3825b5f1 <kenneth.d.johnson@hhs.gov>;
Carter, Carla (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=user71ef86df <Carla.Carter@HHS.GOV>;
Thomas, James (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=9607ef3400034a02a7c0ae79187ee284-Thomas, Jam
<James.Thomas@hhs.gov>;
Christensen, David (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=8d8a547fcd594ec98daa04d065357d77-Christensen
<David.Christensen@hhs.gov>;
Rothschild, Feride (HHS/OS/OGA) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=fa39610c85c24ca2bf49c9a5ce055f30-Rothschild,
<Feride.Rothschild@hhs.gov>;
Heesters, Nicholas (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=9583a7d0912f437e9d31de3c3caac8e3-Heesters, N
<Nicholas.Heesters@hhs.gov>;
Starks, Vadrienne (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=38efe46883b2447688c8fb466035de7b-Starks, Vad
<Vadrienne.Starks@hhs.gov>;
Blakeley, Alec (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=00847f94a9c54848b1a0763688402505-Blakeley, A
<Alec.Blakeley@hhs.gov>;
Gerald, Mary (HHS/OCR) (CTR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=5366970ff15d4fb78f241c897b62845d-Gerald, Mar
<Mary.Gerald@HHS.GOV>;
Henderson, Harold (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=cc949f2d23c043ecb03e6f9c21684f25-Henderson,
<Harold.Henderson@hhs.gov>;
Roman, David (OS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=user5d5a5775 <David.Roman@hhs.gov>;
OS - OCR REG MANAGRS /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=0b199d72b3a8465fb89b6c5cdebe7a32-OCRREGMGRS.
<OCRREGMGRS@hhs.gov>;
OS - OCR Deputy Reg Managers /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=21327c46b7a3427b9916e4d8ce947a26-OCRDEPREG.O
<OCRDEPREG@hhs.gov>;
Kelly, Genevieve (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=1d5689fc09ae4cbe85f58683ef3b521e-Kelly, Gene
<Genevieve.Kelly@hhs.gov>;
Shieh, Daniel (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=3f0b2318adca4e3284be813503205b01-Shieh, Dani
<Daniel.Shieh@hhs.gov>;
Brett-Turner, Jacob (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=03fbc6fd57da4e1f97a2a7ad8b012e79-Brett-Turne
<Jacob.Brett-turner@hhs.gov>;
OS - OCR CR /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=21bdd670bf344fcd950b406cb5cb9aa1-OCROPO.OS-N
<OCROPO@hhs.gov>;
Seeger, Rachel (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=3090ef9b170d45969add4ff475a95583-Rachel Seeg
<Rachel.Seeger@hhs.gov>

Sent Date: 2022/03/16 13:19:27

Delivered Date: 2022/03/16 13:19:31

From: Kelly, Genevieve (HHS/OCR) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1D5689FC09AE4CBE85F58683EF3B521E-KELLY, GENE <Genevieve.Kelly@hhs.gov>

To: (b) (b)(6) (b)(6) (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91 (b)(6) (b)(6)

Subject: RE: THE HILL: Judge orders Florida health agency to hand over documents on gender-affirming care

Date: 2023/02/02 09:13:50

Priority: Normal

Type: Note

Good to hear it. The support continues from here. You are adored by the whole OCR office. Hope you take advantage of that when you need to.

From: (b) (b)(6) (b)(6) (HHS/OCR) (b)(6)

Sent: Thursday, February 2, 2023 9:05 AM

To: Kelly, Genevieve (HHS/OCR) <Genevieve.Kelly@hhs.gov>

Subject: RE: THE HILL: Judge orders Florida health agency to hand over documents on gender-affirming care

You are so kind. Yes, it was great to be there with my siblings; my step-dad is feeling the love. We have our work cut out for us in the days ahead but we're back on the right track ♥

(b)(6) (b)(6) (b) (b)(6) Esq., MSW (she/her)

Senior Advisor to the Director

Phone: (b)(6) (b)(6)

Email: (b)(6)

From: Kelly, Genevieve (HHS/OCR) <Genevieve.Kelly@hhs.gov>

Sent: Thursday, February 2, 2023 9:03 AM

To: (b) (b)(6) (b)(6) (HHS/OCR) (b)(6)

Subject: RE: THE HILL: Judge orders Florida health agency to hand over documents on gender-affirming care

Thanks, (b)(6) Great to have you back. I hope the trip gave you some peace. I am certain it gave that to others.

From: (b) (b)(6) (b)(6) (HHS/OCR) (b)(6)

Sent: Thursday, February 2, 2023 8:42 AM

To: Section 1557 (OCR) <Section1557OCR@HHSGOV.onmicrosoft.com>

Subject: THE HILL: Judge orders Florida health agency to hand over documents on gender-affirming care

Thought y'all might appreciate this recent update from the FL Medicaid trans healthcare ban litigation. (b)(6)

(b)(6)

Judge orders Florida health agency to hand over documents on gender-affirming care

by Brooke Migdon - 02/01/23 5:48 PM ET

Florida judge has ordered the state's Agency for Health Care Administration (AHCA) to produce documents related to its determination that gender-affirming health care cannot be covered under Medicaid because treatments are "experimental and investigational."

Attorneys for the AHCA — the agency that controls most of the state's Medicaid program — will have until Feb. 14 to hand over documents it has previously argued are protected under attorney-client privilege and work-product privilege.

Those include exchanges between agency officials and "any person" involved in the creation of a June AHCA report that determined available medical literature provides "insufficient evidence" that puberty blockers, hormones and gender-affirming surgeries are safe and effective treatments for gender dysphoria.

The report has been used to bar an estimated 9,000 transgender Floridians from using Medicaid to help pay for gender-affirming health care and was cited during a November meeting between the state's medical boards that resulted in a vote to adopt a rule that prevents minors in Florida from accessing gender-affirming treatments.

Gender-affirming health care for youths and adults has been deemed safe and medically necessary by most professional medical organizations.

In a six-page order published Tuesday, U.S. District Judge Robert Hinkle said the AHCA must produce, among other documents, its communications with experts that were used to inform the agency's June report on gender-affirming health care and the ensuing rule that excluded treatments from Medicaid.

Lawyers for the agency have said that while the desired documents were created for rulemaking purposes, they were also intended for use in litigation they knew would follow the adoption of the rule, making them protected documents by law.

Hinkle said he disagreed.

"Even if this leaves room in an appropriate circumstance for protection of documents created for dual purposes — not just when the primary purpose was to aid in future litigation — the experts at issue here were an essential part of the mandated rulemaking process," he wrote in the order, which is part of an ongoing lawsuit challenging Florida's Medicaid exclusion.

Hinkle continued, "Either the experts were retained to assist in an honest evaluative process—in which event their communications were not within work-product protection — or the rulemaking process was a sham and the real goal was to prevail in the

anticipated litigation — a possibility the defendants could embrace to win the discovery battle only by acknowledging that the rulemaking process was fatally flawed, or nearly so.”

Court documents filed earlier this month suggest the state’s rulemaking process was just that, with an AHCA employee alleging that the June report “does not present an honest and accurate assessment” of medical evidence and practice guidelines related to gender-affirming health care.

Attorneys for the AHCA must file a revised log of protected documents by Feb. 2, according to Hinkle’s order. The plaintiffs in the case — two transgender minors and two transgender adults in their 20s — may file an additional motion to compel if they believe the protected documents are being “improperly withheld.”

(b)(6) (b)(6) (b) (b)(6) Esq., MSW (she/her)
Senior Advisor to the Director
Phone: (b)(6) (b)(6)
Email: (b)(6)

From: (b)(6) (b)(6) (b) (b)(6) (b)(6)
Sent: Wednesday, February 1, 2023 11:28 PM
To: (b) (b)(6) (b)(6) (HHS/OCR) (b)(6)
Subject: THE HILL: Judge orders Florida health agency to hand over documents on gender-affirming care

Judge orders Florida health agency to hand over documents on gender-affirming care

A Florida judge has ordered the state’s Agency for Health Care Administration (AHCA) to produce documents related to its determination that gender-affirming health care cannot be covered under Medicaid because treatments are “experimental and investigational.”

Read in The Hill: https://apple.news/Ap4_n391vScennu5aK6uSkA

Shared from [Apple News](#)

Sender:	Kelly, Genevieve (HHS/OCR) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1D5689FC09AE4CBE85F58683EF3B521E-KELLY, GENE <Genevieve.Kelly@hhs.gov>
Recipient:	(b) (b)(6) (b)(6) (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91 (b)(6) (b)(6)
Sent Date:	2023/02/02 09:13:47
Delivered Date:	2023/02/02 09:13:50



GOVERNOR GREG ABBOTT

February 22, 2022

The Honorable Jaime Masters
Commissioner
Texas Department of Family and Protective Services
701 West 51st Street
Austin, Texas 78751

Dear Commissioner Masters:

Consistent with our correspondence in August 2021, the Office of the Attorney General (OAG) has now confirmed in the enclosed opinion that a number of so-called “sex change” procedures constitute child abuse under existing Texas law. Because the Texas Department of Family and Protective Services (DFPS) is responsible for protecting children from abuse, I hereby direct your agency to conduct a prompt and thorough investigation of any reported instances of these abusive procedures in the State of Texas.

As OAG Opinion No. KP-0401 makes clear, it is already against the law to subject Texas children to a wide variety of elective procedures for gender transitioning, including reassignment surgeries that can cause sterilization, mastectomies, removals of otherwise healthy body parts, and administration of puberty-blocking drugs or supraphysiologic doses of testosterone or estrogen. *See* TEX. FAM. CODE § 261.001(1)(A)–(D) (defining “abuse”). Texas law imposes reporting requirements upon all licensed professionals who have direct contact with children who may be subject to such abuse, including doctors, nurses, and teachers, and provides criminal penalties for failure to report such child abuse. *See id.* §§ 261.101(b), 261.109(a-1). There are similar reporting requirements and criminal penalties for members of the general public. *See id.* §§ 261.101(a), 261.109(a).

Texas law also imposes a duty on DFPS to investigate the parents of a child who is subjected to these abusive gender-transitioning procedures, and on other state agencies to investigate licensed facilities where such procedures may occur. *See* TEX. FAM. CODE § 261.301(a)–(b). To protect Texas children from abuse, DFPS and all other state agencies must follow the law as explained in OAG Opinion No. KP-0401.

Sincerely,

Greg Abbott
Governor

The Honorable Jaime Masters

February 22, 2022

Page 2

GA:jsd

Enclosure

cc: Ms. Cecile Young, Executive Commissioner, Health and Human Services Commission
Mr. Stephen B. Carlton, Executive Director, Texas Medical Board
Ms. Katherine A. Thomas, Executive Director, Texas Board of Nursing
Dr. Tim Tucker, Executive Director, Texas State Board of Pharmacy
Mr. Darrell Spinks, Executive Director, Texas Behavioral Health Executive Council
Mr. Mike Morath, Commissioner, Texas Education Association
Ms. Cristina Galindo, Chair, Texas State Board of Educator Certification
Ms. Camille Cain, Executive Director, Texas Juvenile Justice Department



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 18, 2022

The Honorable Matt Krause
Chair, House Committee on General
Investigating
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Opinion No. KP-0401

Re: Whether certain medical procedures performed on children constitute child abuse (RQ-0426-KP)

Dear Representative Krause:

You ask whether the performance of certain medical and chemical procedures on children—several of which have the effect of sterilization—constitute child abuse.¹ You specifically ask about procedures falling under the broader category of “gender reassignment surgeries.” Request Letter at 1. You state that such procedures typically are performed to “transition individuals with gender dysphoria to their desired gender,” and you identify the following specific “sex-change procedures”:

(1) sterilization through castration, vasectomy, hysterectomy, oophorectomy, metoidioplasty, orchiectomy, penectomy, phalloplasty, and vaginoplasty; (2) mastectomies; and (3) removing from children otherwise healthy or non-diseased body part or tissue.

Id. at 1 (footnotes omitted). Additionally, you ask whether “providing, administering, prescribing, or dispensing drugs to children that induce transient or permanent infertility” constitutes child abuse. *See id.* at 1–2. You include the following categories of drugs: (1) puberty-suppression or puberty-blocking drugs; (2) supraphysiologic doses of testosterone to females; and (3) supraphysiologic doses of estrogen to males. *See id.*

¹*See* Letter from Honorable Matt Krause, Chair, House Comm. on Gen. Investigating, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Aug. 23, 2021), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2021/pdf/RQ0426KP.pdf> (“Request Letter”); *see also* Letter from Honorable Jaime Masters, Comm’r, Tex. Dept. of Family & Protective Servs., to Honorable Greg Abbott, Governor, State of Tex. at 1 (Aug. 11, 2021), https://gov.texas.gov/uploads/files/press/Response_to_August_6_2021_OOG_Letter_08.11.2021.pdf (on file with the Op. Comm.) (hereinafter “Commissioner’s Letter”).

You qualify your question with the following statement: “Some children have a medically verifiable genetic disorder of sex development or do not have the normal sex chromosome structure for male or female as determined by a physician through genetic testing that require procedures similar to those described in this request.” *Id.* at 2. In other words, in rare circumstances, some of the procedures you list are borne out of medical necessity. For example, a minor male with testicular cancer may need an orchiectomy. This opinion does not address or apply to medically necessary procedures.

I. Executive Summary

Based on the analysis herein, each of the “sex change” procedures and treatments enumerated above, when performed on children, can legally constitute child abuse under several provisions of chapter 261 of the Texas Family Code.

- These procedures and treatments can cause “mental or emotional injury to a child that results in an observable and material impairment in the child’s growth, development, or psychological functioning.” TEX. FAM. CODE § 261.001(1)(A).
- These procedures and treatments can “caus[e] or permit[] the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child’s growth, development, or psychological functioning.” *Id.* § 261.001(1)(B).
- These procedures and treatments can cause a “physical injury that results in substantial harm to the child.” *Id.* § 261.001(1)(C).
- These procedures and treatments often involve a “failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child[,]” particularly by parents, counselors, and physicians. *Id.* § 261.001(1)(D).

In addition to analysis under the Family Code, we discuss below the fundamental right to procreation, issues of physical and emotional harm associated with these procedures and treatments, consent laws in Texas and throughout the country, and existing child abuse standards. Each of the procedures and treatments you ask about can constitute child abuse when performed on minor children.

II. Nature and context of the question presented

Forming the basis for your request, you contend that the “sex change” procedures and treatments you ask about are typically performed to transition individuals with gender dysphoria to their desired gender. *See* Request Letter at 1. The novel trend of providing these elective sex changes to minors often has the effect of permanently sterilizing those minor children. While you refer to these procedures as “sex changes,” it is important to note that it remains medically impossible to truly change the sex of an individual because this is determined biologically at

conception. No doctor can replace a fully functioning male sex organ with a fully functioning female sex organ (or vice versa). In reality, these “sex change” procedures seek to destroy a fully functioning sex organ in order to cosmetically create the illusion of a sex change.

Beyond the obvious harm of permanently sterilizing a child, these procedures and treatments can cause side effects and harms beyond permanent infertility, including serious mental health effects, venous thrombosis/thromboembolism, increased risk of cardiovascular disease, weight gain, decreased libido, hypertriglyceridemia, elevated blood pressure, decreased glucose tolerance, gallbladder disease, benign pituitary prolactinoma, lowered and elevated triglycerides, increased homocysteine levels, hepatotoxicity, polycythemia, sleep apnea, insulin resistance, chronic pelvic pain, and increased cancer and stroke risk.²

While the spike in these procedures is a relatively recent development,³ sterilization of minors and other vulnerable populations without clear consent is not a new phenomenon and has an unsettling history. Historically weaponized against minorities, sterilization procedures have harmed many vulnerable populations, such as African Americans, female minors, the disabled, and others.⁴ These violations have been found to infringe upon the fundamental human right to procreate. Any discussion of sterilization procedures in the context of minor children must, accordingly, consider the fundamental right that is at stake: the right to procreate. Given the uniquely vulnerable nature of children, and the clear dangers of sterilization demonstrated throughout history, it is important to emphasize the crux of the question you present today—whether facilitating (parents/counselors) or conducting (doctors) medical procedures and treatments that could permanently deprive minor children of their constitutional right to procreate, or impair their ability to procreate, before those children have the legal capacity to consent to those procedures and treatments, constitutes child abuse.

The medical evidence does not demonstrate that children and adolescents benefit from engaging in these irreversible sterilization procedures. The prevalence of gender dysphoria in children and adolescents has never been estimated, and there is no scientific consensus that these sterilizing procedures and treatments even serve to benefit minor children dealing with gender dysphoria. As stated by the Centers for Medicare and Medicaid Services, “There is not enough high-quality evidence to determine whether gender reassignment surgery improves health outcomes for Medicare beneficiaries with gender dysphoria and whether patients most likely to benefit from these types of surgical intervention can be identified prospectively.”⁵ Also, “several studies show a higher rate of regret at being sterilized among younger women than among those

²See Timothy Cavanaugh, M.D., *Cross-Sex Hormone Therapy*, FENWAY HEALTH (2015), <https://www.lgbtqihealtheducation.org/wp-content/uploads/Cross-Sex-Hormone-Therapy1.pdf>.

³SOCIETY FOR EVIDENCE BASED GENDER MEDICINE, <https://segm.org/> (demonstrating a spike in referrals to Gender Identify Development Services around the mid-2010s).

⁴Alexandra Stern, Ph.D., *Forced sterilization policies in the US targeted minorities and those with disabilities – and lasted into the 21st Century*, (Sept. 23, 2020), <https://ihpi.umich.edu/news/forced-sterilization-policies-us-targeted-minorities-and-those-disabilities-and-lasting-21st>.

⁵Centers for Medicare and Medicaid Services, Decision Memo for Gender Dysphoria and Gender Reassignment Surgery (CAG-00446N) (Aug. 30, 2016), <http://www.lb7.uscourts.gov/documents/17-264URL1DecisionMemo.pdf>.

who were sterilized at a later age.” 43 FED. REG. at 52,151, 52,152. This further indicates that minor children are not sufficiently mature to make informed decisions in this context.

There is no evidence that long-term mental health outcomes are improved or that rates of suicide are reduced by hormonal or surgical intervention. “Childhood-onset gender dysphoria has been shown to have a high rate of natural resolution, with 61-98% of children reidentifying with their biological sex during puberty. No studies to date have evaluated the natural course and rate of gender dysphoria resolution among the novel cohort presenting with adolescent-onset gender dysphoria.”⁶ One of the few relevant studies monitored transitioned individuals for 30 years. It found high rates of post-transition suicide and significantly elevated all-cause mortality, including increased death rates from cardiovascular disease and cancer, although causality could not be established.⁷ The lack of evidence in this field is why the Centers for Medicare & Medicaid Services rejected a nationwide coverage mandate for adult gender transition surgeries during the Obama Administration. Similarly, the World Professional Association for Transgender Health states that with respect to irreversible procedures, genital surgery should not be carried out until patients reach the legal age of majority to give consent for medical procedures in a given country.⁸

Generally, the age of majority is eighteen in Texas. TEX. CIV. PRAC. & REM. CODE § 129.001. With respect to consent to sterilization procedures, Medicaid sets the age threshold even higher, at twenty-one years old. Children and adolescents are promised relief and asked to “consent” to life-altering, irreversible treatment—and to do so in the midst of reported psychological distress, when they cannot weigh long-term risks the way adults do, and when they are considered by the State in most regards to be without legal capacity to consent, contract, vote, or otherwise. Legal and ethics scholars have suggested that it is particularly unethical to radically intervene in the normal physical development of a child to “affirm” a “gender identity” that is at odds with bodily sex.⁹

State and federal governments have “wide discretion to pass legislation in areas where there is medical and scientific uncertainty.” *Gonzales v. Carhart*, 550 U.S. 124, 163 (2007). Thus, states routinely regulate the medical profession and routinely update their regulations as new trends arise and new evidence becomes available. In the opioid context, for instance, states responded to an epidemic caused largely by pharmaceutical companies and medical professionals. Dismissing as “opioidphobic” any concern that “raising pain treatment to a ‘patients’ rights’ issue could lead to overreliance on opioids,” these experts created new pain standards and assured doctors that

⁶SOCIETY FOR EVIDENCE BASED GENDER MEDICINE, <https://segm.org/>.

⁷See Cecilia Dhejne, et al., *Long-term Follow-up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden*, 6 PLOS ONE, Issue 2, 5 (Feb. 22, 2011) (19 times the expected norm overall (Table 2), and 40 times the norm for biological females (Table s1)), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0016885>.

⁸WORLD PROFESSIONAL ASS’N FOR TRANSGENDER HEALTH, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* at 59 (7th ed. 2012), available at https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English2012.pdf?t=1613669341.

⁹Ryan T. Anderson & Robert P. George, Physical Interventions on the Bodies of Children to “Affirm” their “Gender Identity” Violate Sound Medical Ethics and Should Be Prohibited, PUBLIC DISCOURSE: THE JOURNAL OF THE WITHERSPOON INSTITUTE (Dec. 8, 2019), <https://www.thepublicdiscourse.com/2019/12/58839/>.

prescribing more opioids was largely risk free.¹⁰ *Id.* As we know now, the results were—indeed, *are*—nothing short of tragic.¹¹ There is always the potential for novel medical determinations to promote purported remedies that may not improve patient outcomes and can even result in tragic harms. The same potential for harm exists for minors who have engaged in the type of procedures or treatments above.

The State’s power is arguably at its zenith when it comes to protecting children. In the Supreme Court’s words, that is due to “the peculiar vulnerability of children.” *Bellotti v. Baird*, 443 U.S. 622, 634 (1979); *see also Ginsberg v. New York*, 390 U.S. 629, 640 (1968) (“The State also has an independent interest in the well-being of its youth.”). The Supreme Court has explained that children’s “inability to make critical decisions in an informed, mature manner” makes legislation to protect them particularly appropriate. *Bellotti*, 443 U.S. at 634. The procedures that you ask about impose significant and irreversible effects on children, and we therefore address them with extreme caution, mindful of the State’s duty to protect its children. *See generally T.L. v. Cook Children’s Med. Ctr.*, 607 S.W.3d 9, 42 (Tex. App.—Fort Worth 2020), *cert. denied*, 141 S. Ct. 1069 (2021) (“Children, by definition, are not assumed to have the capacity to take care of themselves. They are assumed to be subject to the control of their parents, and if parental control falters, the State must play its part as *parens patriae*. In this respect, the [child]’s liberty interest may, in appropriate circumstances, be subordinated to the State’s *parens patriae* interest in preserving and promoting the welfare of the child.”) (citation omitted).

III. To the extent that these procedures and treatments could result in sterilization, they would deprive the child of the fundamental right to procreate, which supports a finding of child abuse under the Family Code.

A. The procedures you describe can and do cause sterilization.

The surgical and chemical procedures you ask about can and do cause sterilization.¹² Similarly, the treatments you ask about often involve puberty-blocking medications. Such medications suppress the body’s production of estrogen or testosterone to prevent puberty and are being used in this context to pause the sexual development of a person that occurs during puberty. The use of these chemical procedures for this purpose is not approved by the federal Food and Drug Administration and is considered an “off-label” use of the medications. These chemical procedures prevent a person’s body from developing the capability to procreate. There is insufficient medical evidence available to demonstrate that discontinuing the medication resumes a normal puberty process. *See generally Hennessy-Waller v. Snyder*, 529 F. Supp. 3d 1031, 1042 (D. Ariz. 2021), citing *Bell v. Tavistock and Portman NHS Foundation Trust*, 2020 EWHC 3274,

¹⁰*See* David W. Baker, *The Joint Commission’s Pain Standards: Origins and Evolution* 4 (May 5, 2017) (footnotes omitted), <https://perma.cc/RZ42-YNRC> (“[N]o large national studies were conducted to examine whether the standards improved pain assessment or control.”).

¹¹*See generally* U.S. HEALTH & HUMAN SERVS., WHAT IS THE U.S. OPIOID EPIDEMIC?, <https://www.hhs.gov/opioids/about-the-epidemic/index.html>.

¹²*See* Philip J. Cheng, *Fertility Concerns of the Transgender Patient*, *TRANSL ANDROL UROL.* 2019;9(3):209-218 (explaining that hysterectomy, oophorectomy, and orchiectomy “results in permanent sterility”), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6626312/>.

¶ 134 (Dec. 1, 2020) (referring to *Bell's* conclusion that a clinic's practice of prescribing puberty-suppressing medication to individuals under age 18 with gender dysphoria and determining such treatment was experimental). Thus, because the procedures you inquire about can and do result in sterilization, they implicate a minor child's constitutional right to procreate.

B. The United States Constitution protects a fundamental right to procreation.

The United States Supreme Court recognizes that the right to procreate is a fundamental right under the Fourteenth Amendment. *See Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942). Almost a century ago, the Court explained the unique concerns sterilization poses respecting this fundamental right:

The power to sterilize, if exercised, may have subtle, far reaching and devastating effects. In evil or reckless hands it can cause races or types which are inimical to the dominant group to wither and disappear. There is no redemption for the individual whom the law touches. Any experiment which the State conducts is to his irreparable injury. He is forever deprived of a basic liberty.

Id. To the extent the procedures you describe cause permanent damage to reproductive organs and functions of a child before that child has the legal capacity to consent, they unlawfully violate the child's constitutional right to procreate. *See generally* 43 FED. REG. at 52,146–52,152 (discussing ripeness for coercion and regret rates among minor children).

C. Because children are legally incompetent to consent to sterilization, procedures and treatments that result in a child's sterilization are unauthorized and infringe on the child's fundamental right to procreate.

Under Texas law, a minor is a person under eighteen years of age that has never been married and never declared an adult by a court. *See* TEX. CIV. PRAC. & REM. CODE § 129.001; TEX. FAM. CODE §§ 1.104, 101.003 (including a minor on active duty in the military, one who does not live with a parent or guardian and who manages their own financial affairs, among others). State law recognizes seven instances in which a minor can consent to certain types of medical treatment on their own. *See id.* § 32.003. None of the express provisions relating to a minor's ability to consent to medical treatment addresses consent to the procedures used for "gender-affirming" treatment. *See generally id.*

The lack of authority of a minor to consent to an irreversible sterilization procedure is consistent with other law. The federal Medicaid program does not allow for parental consent, has established a minimum age of 21 for consent to sterilization procedures, and imposes detailed requirements for obtaining that consent. 42 C.F.R. §§ 441.253(a); 441.258 ("Consent form requirements"). Federal Medicaid funds may not be used for any sterilization without complying with the consent requirements, meaning a doctor may not be reimbursed for sterilization procedures performed on minors. *Id.* § 441.256(a).

The higher age limit for sterilization procedures was implemented due to a number of special concerns, including historical instances of forced sterilization. *See* 43 FED. REG. 52146, 52148. “[M]inors and other incompetents have been sterilized with federal funds and . . . an indefinite number of poor people have been improperly coerced into accepting a sterilization operation under the threat that various federally supported welfare benefits would be withdrawn unless they submitted to irreversible sterilization.” *Relf v. Weinberger*, 372 F. Supp. 1196, 1199 (D.D.C. 1974), *vacated*, 565 F.2d 722 (D.C. Cir. 1977). In addition, the 21-year minimum age-of-consent rule accounted for concerns that minors were more susceptible to coercion than those over 21 and that younger women had higher rates of regret for sterilization than those who were sterilized at a later age. 43 FED. REG. at 52,151 (pointing to comments suggesting that “persons under 21 are more susceptible to coercion than those over 21 and are more likely to lack the maturity to make an informed decision” and acknowledging “these considerations favor protecting such individuals by limiting their access to the procedure”); *see id.* at 52,151–52,152 (pointing to “several studies [that] show a higher rate of regret at being sterilized among younger women than among those who were sterilized at a later age”).

Regarding parental consent, Texas law generally recognizes a parent’s right to consent to a child’s medical care. TEX. FAM. CODE § 151.001(a)(6) (“A parent of a child has the following rights and duties: . . . (6) the right to consent to the child’s . . . medical and dental care, and psychiatric, psychological, and surgical treatment . . .”). But this general right to consent to certain medically necessary procedures does not extend to elective (not medically necessary) procedures and treatments that infringe upon a minor child’s constitutional right to procreate. Indeed, courts have analyzed the imposition of unnecessary medical procedures upon children in similar circumstances in the past to determine whether doing so constitutes child abuse.

One such situation that the law has addressed is often referred to as “Munchausen by proxy” or “factitious disorder imposed on another”:

[A] psychological disorder that is characterized by the intentional feigning, exaggeration, or induction of the symptoms of a disease or injury in oneself or another and that is accompanied by the seeking of excessive medical care from various doctors and medical facilities typically resulting in multiple diagnostic tests, treatments, procedures, and hospitalizations. Unlike the malingerer, who consciously induces symptoms to obtain something of value, the patient with a factitious disorder consciously produces symptoms for unconscious reasons, without identifiable gain.¹³

In situations such as this, an individual intentionally seeks to procure—often by deceptive means, such as exaggeration—unnecessary medical procedures or treatments either for themselves or others, usually their children. In Texas, courts have found that these “Munchausen by proxy” situations can constitute child abuse. *See generally Williamson v. State*, 356 S.W.3d 1, 19–21 (Tex. App.—Houston [1st Dist.] 2010, pet. ref’d) (recognizing that an unnecessary medical procedure

¹³*Factitious disorder*, MERRIAM-WEBSTER.COM DICTIONARY, <https://www.merriam-webster.com/dictionary/factitious%20disorder>.

may cause serious bodily injury, supporting a charge of injury to a child under section 22.04 of the Penal Code).¹⁴

In the context of elective sex change procedures for minors, the Legislature has not provided any avenue for parental consent, and no judicial avenue exists for the child to proceed with these procedures and treatments without parental consent. By comparison, Texas law respecting abortion requires parental consent and, in extenuating circumstances, permits non-parental consent for a minor to obtain an abortion. TEX. OCC. CODE § 164.052(19) (requiring written consent of a child's parent before a physician may perform an abortion on an unemancipated minor); TEX. FAM. CODE § 33.003 (authorizing judicial approval of a minor's abortion without parental consent in limited circumstances). But the Texas Legislature has not decided to make those same allowances for consent to sterilization, and thus a parent cannot consent to sterilization procedures or treatments that result in the permanent deprivation of a minor child's constitutional right to procreate.¹⁵ Thus, no avenue exists for a child to consent to or obtain consent for an elective procedure or treatment that causes sterilization.

IV. The procedures and treatments you describe can constitute child abuse under the Family Code.

Having established the legal and cultural context of this opinion request, we now consider whether these procedures and treatments qualify as child abuse under the Family Code. *See* Request Letter at 1. Where, as a factual matter, one of these procedures or treatments cannot result in sterilization, a court would have to go through the process of evaluating, on a case-by-case basis, whether that procedure violates any of the provisions of the Family Code—and whether the procedure or treatment poses a similar threat or likelihood of substantial physical and emotional harm. Thus, where a factual scenario involving non-medically necessary, gender-based procedures or treatments on a minor causes or threatens to cause harm or irreparable harm¹⁶ to the child—comparable to instances of Munchausen syndrome by proxy or criminal injury to a child—or demonstrates a lack of consent, etc., a court could find such procedures to constitute child abuse under section 261.001.

A. The Texas Legislature defines child abuse broadly.

Family Code chapter 261 provides for the reporting and investigation of abuse or neglect of a child. *See* TEX. FAM. CODE §§ 261.001–.505; *see also* TEX. PENAL CODE § 22.04 (providing for the offense of injury to a child). Section 261.001 defines abuse through a broad and nonexclusive list of acts and omissions. TEX. FAM. CODE § 261.001(1); *see also In re Interest of*

¹⁴*See also* Tex. Dep't of Fam. & Protective Servs., Tex. Practice Guide for Child Protective Servs. Att'ys, § 7, at 15 (2018), https://www.dfps.state.tx.us/Child_Protection/Attorneys_Guide/default.asp.

¹⁵Federal Medicaid programs will not reimburse for these types of procedures on minors, regardless of whether the child or parent consents, because of the numerous concerns outlined in the Federal Register provisions discussed above. *See* 43 FED. REG. at 52,146–52,159.

¹⁶For example, a non-medically necessary procedure or treatment that seeks to alter a minor female's breasts in such a way that would or could prevent that minor female from having the ability to breastfeed her eventual children likely causes irreparable harm and could form the basis for a finding of child abuse.

S.M.R., 434 S.W.3d 576, 583 (Tex. 2014). Of course, this broad definition of abuse would apply to and include criminal acts against children, such as “female genital mutilation”¹⁷ or “injury to a child.”¹⁸

Your questions implicate several components of section 261.001(1). Subsection 261.001(1)(A) identifies “mental or emotional injury to a child that results in an observable and material impairment in the child’s growth, development, or psychological functioning.” Subsection 261.001(1)(B) provides that “causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child’s growth, development, or psychological functioning” is abuse. Subsection 261.001(1)(C) includes as abuse a “physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child.” And subsection 261.001(1)(D) includes “failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child.”

Offering some clarity to the scope of “abuse” under subsection 261.001(1), the Texas Department of Family and Protective Services (“Department”) adopted rules giving meaning to the key terms and phrases used in the definition. The Department acknowledges that emotional abuse is a subset of abuse that includes “[m]ental or emotional injury to a child that results in an observable and material impairment in the child’s growth, development, or psychological functioning.” 40 TEX. ADMIN. CODE § 707.453(a) (Tex. Dept. of Fam. & Protective Servs., What is Emotional Abuse?). The Department’s rules provide that “[m]ental or emotional injury” means

[t]hat a child of any age experiences significant or serious negative effects on intellectual or psychological development or functioning. . . . and exhibits behaviors indicative of observable and material impairment mean[ing] discernable and substantial damage or deterioration to a child’s emotional, social, and cognitive development.

Id. § 707.453(b)(1)–(2).

With respect to physical injuries, the Department further clarified the meaning of the phrase “[p]hysical injury that results in substantial harm to the child,” explaining that it means in relevant part a

¹⁷A person commits an offense if the person: (1) knowingly circumcises, excises, or infibulates any part of the labia majora or labia minora or clitoris of another person who is younger than 18 years of age; (2) is a parent or legal guardian of another person who is younger than 18 years of age and knowingly consents to or permits an act described by Subdivision (1) to be performed on that person; or (3) knowingly transports or facilitates the transportation of another person who is younger than 18 years of age within this state or from this state for the purpose of having an act described by Subdivision (1) performed on that person. TEX. HEALTH & SAFETY CODE § 167.001.

¹⁸A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causes to a child, elderly individual, or disabled individual: (1) serious bodily injury; (2) serious mental deficiency, impairment, or injury; or (3) bodily injury. TEX. PENAL CODE § 22.04.

real and significant physical injury or damage to a child that includes but is not limited to . . . [a]ny of the following, if caused by an action of the alleged perpetrator directed toward the alleged victim: . . . *impairment of or injury to any bodily organ or function; . . .*

Id. § 707.455(b)(2)(A) (emphasis added). The Department’s rules also define a “[g]enuine threat of substantial harm from physical injury” to include the

declaring or exhibiting the intent or determination to inflict real and significant physical injury or damage to a child. The declaration or exhibition does not require actual physical contact or injury.

Id. § 707.455(b)(1) (emphasis added).

Subsection 261.001(1) and these rules define “abuse” broadly to include mental or emotional injury in addition to a physical injury. To the extent the specific procedures about which you ask may cause mental or emotional injury or physical injury within these provisions, they constitute abuse.

Further, the Legislature has explicitly defined “female genital mutilation” and made such act a state jail felony. *See* TEX. HEALTH & SAFETY CODE § 167.001(a)–(b). While the Legislature has not elsewhere defined the phrase “genital mutilation”, nor specifically for males of any age,¹⁹ the Legislature’s criminalization of a particular type of genital mutilation supports an argument that analogous procedures that include genital mutilation—potentially including gender reassignment surgeries—could constitute “abuse” under the Family Code’s broad and non-exhaustive examples of child abuse or neglect.²⁰ *See* TEX. FAM. CODE § 261.001(1)(A)–(M); *see generally* Commissioner’s Letter at 1 (concluding that genital “mutilation may cause a genuine threat of substantial harm from physical injury to the child”). Thus, many of the procedures and treatments you ask about can constitute “female genital mutilation,” a standalone criminal act. But even where these procedures and treatments may not constitute “female genital mutilation” under Texas law, a court could still find that these procedures and treatments constitute child abuse under section 261.001 of the Family Code.

B. Each of these procedures and treatments can constitute abuse under Texas Family Code § 261.001(1)(A), (B), (C), or (D).

The Texas Family Code is clear—causing or permitting substantial harm to the child or the child’s growth and development is child abuse. Courts have held that an unnecessary surgical

¹⁹Your letter does not mention nor request an analysis under federal law. However, under federal law, there are at least two definitions of female genital mutilation, 8 U.S.C. § 1374 and 18 U.S.C. § 116. For purposes of this opinion, we have not considered federal statutes, nor have we undertaken any analysis under state or federal constitutions beyond that included here.

²⁰The Eighty-seventh Legislature considered multiple bills that would have amended Family Code subsection 261.001(1) to expressly include in the definition of abuse the performing of surgery or other medical procedures on a child for the purpose of gender transitioning or gender reassignment. Those bills did not pass. *See, e.g.,* Tex. H.B. 22, 87th Leg., 3d C.S. (2021).

procedure that removes a healthy body part from a child can constitute a real and significant injury or damage to the child. *See generally Williamson v. State*, 356 S.W.3d 1, 19–21 (Tex. App.—Houston [1st Dist.] 2010, pet. ref’d) (recognizing that an unnecessary medical procedure may cause serious bodily injury, supporting a charge of injury to a child under section 22.04 of the Penal Code). The *Williamson* case involved a “victim of medical child abuse, sometimes referred to as Munchausen Syndrome by Proxy.” *Id.* at 5. Munchausen syndrome by proxy is “where an alleged perpetrator . . . attempts to gain medical procedures and issues for [their] child for secondary gain for themselves [A]s a result, the children are subjected to multiple diagnostic tests, therapeutic procedures, sometimes operative procedures, in order to treat things that aren’t really there.” *Williamson*, 356 S.W.3d at 11. In the *Williamson* case, the abuse was perpetrated on the child when he was five and six years old by his mother. *Id.* The evidence showed that two surgeries performed on the child “were not medically necessary and that [his mother] knowingly and intentionally caused the unnecessary procedures to be performed by fabricating, exaggerating, and inducing the symptoms leading to the surgeries.” *Id.*

Similarly, in *Austin v. State*, a court of appeals upheld the conviction for felony injury of a child of a mother suffering from Munchausen syndrome by proxy who injected her son with insulin. *See* 222 S.W.3d 801, 804 (Tex. App.—Austin 2007, pet. ref’d); *see also In re McCabe*, 580 S.E.2d 69, 73 (N.C. Ct. App. 2003) (concluding that abuse through Munchausen syndrome by proxy was abuse under state statute defining abuse in a similar manner as chapter 261); *Matter of Aaron S.*, 625 N.Y.S.2d 786, 793 (Fam. Ct. 1993), *aff’d sub nom. Matter of Suffolk Cnty. Dep’t of Soc. Servs. on Behalf of Aaron S.*, 626 N.Y.S.2d 227 (App. Div. 1995) (finding that a mother neglected her son by subjecting him to a continuous course of medical treatment for condition which he did not have and that he was a neglected child under state statute governing abuse of a child). In guidance documents published for its child protective services attorneys, the Texas Department of Family and Protective Services explains that “Munchausen by proxy syndrome is relatively rare, but when it occurs, it is frequently a basis for a finding of child abuse.”²¹ Whether motivated by Munchausen syndrome by proxy or otherwise, it is clear that unnecessary medical treatment inflicted on a child by a parent can constitute child abuse under the Family Code.

By definition, procedures and treatments resulting in sterilization cause “physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child” by surgically altering key physical body parts of the child in ways that render entire body parts, organs, and the entire reproductive system of the child physically incapable of functioning. Thus, such procedures and treatments can constitute child abuse under section 261.001(1)(C). Even where the procedure or treatment does not involve the physical removal or alteration of a child’s reproductive organs (*i.e.* puberty blockers), these procedures and treatments can cause “mental or emotional injury to a child that results in an observable and material impairment in the child’s growth, development, or psychological functioning” by subjecting a child to the mental and emotional injury associated with lifelong sterilization—an impairment to

²¹TEX. DEP’T OF FAM. & PROTECTIVE SERVS., TEX. PRACTICE GUIDE FOR CHILD PROTECTIVE SERVS. ATT’YS, § 7, at 15 (2018), https://www.dfps.state.tx.us/Child_Protection/Attorneys_Guide/default.asp (citing *Reid v. State*, 964 S.W.2d 723 (Tex. App.—Amarillo 1998, pet. ref’d) (mem. op.) (expert testimony admitted regarding general acceptance of Munchausen diagnosis as a form of child abuse)).

one's growth and development. Therefore, a court could find these procedures and treatments to be child abuse under section 261.001(1)(A). Further, attempts by a parent to consent to these procedures and treatments on behalf of their child may, if successful, "cause or permit the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning[.]" and could be child abuse under section 261.001(1)(B). Additionally, the failure to stop a doctor or another parent from conducting these treatments and procedures on a minor child can constitute a "failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child[.]" and this "failure to make a reasonable effort to prevent" can also constitute child abuse under section 261.001(1)(D). Any person that conducts or facilitates these procedures or treatments could be engaged in child abuse, whether that be parents, doctors, counselors, etc.

It is important to note that anyone who has "a reasonable cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report" as described in the Family Code. TEX. FAM. CODE § 261.101(a). Further, "[i]f a professional has reasonable cause to believe that a child has been abused or neglected or may be abused or neglected, or that a child is a victim of an offense under Section 21.11, Penal Code, and the professional has reasonable cause to believe that the child has been abused as defined by Section 261.001, the professional shall make a report not later than the 48th hour after the hour the professional first has reasonable cause to believe that the child has been or may be abused or neglected or is a victim of an offense under Section 21.11, Penal Code." TEX. FAM. CODE § 261.101(b). The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers. *Id.* A failure to report under these circumstances is a criminal offense. TEX. FAM. CODE § 261.109(a).

S U M M A R Y

Each of the “sex change” procedures and treatments enumerated above, when performed on children, can legally constitute child abuse under several provisions of chapter 261 of the Texas Family Code.

When considering questions of child abuse, a court would likely consider the fundamental right to procreation, issues of physical and emotional harm associated with these procedures and treatments, consent laws in Texas and throughout the country, and existing child abuse standards.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is fluid and cursive, with the first name "Ken" and last name "Paxton" clearly distinguishable.

KEN PAXTON
Attorney General of Texas

BRENT E. WEBSTER
First Assistant Attorney General

LESLEY FRENCH
Chief of Staff

MURTAZA F. SUTARWALLA
Deputy Attorney General for Legal Counsel

AARON REITZ
Deputy Attorney General for Legal Strategy

RALPH M. MOLINA
Special Counsel to the First Assistant Attorney General

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

CHARLOTTE M. HARPER
Assistant Attorney General, Opinion Committee

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

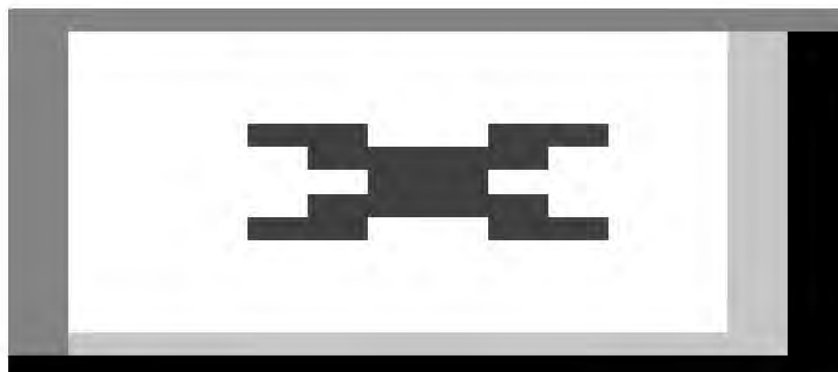
of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

From:	Rainer, Melanie Fontes (OS/IOS) </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9C7242F10A494D45BAB72C452ECD9F80-RAINER, MEL>
	Jones, Kamara (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=05cef78e341b467099676c353121c1ed-Jones, Kama <Kamara.Jones@hhs.gov>;
To:	Silva, Jorge (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e359ddd1d20843a0896fbd09dd8fed4d-Silva, Jorg <Jorge.Silva@hhs.gov>;
	Eng, Adrian (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=12aa973ac7274d72944c46da117a4179-Eng, Adrian <Adrian.Eng@hhs.gov>
Subject:	RE: Flag
Date:	2022/03/10 09:44:00
Priority:	Normal
Type:	Note



A person takes a picture of an Inclusive Pride flag and a rainbow flag at the Stonewall National Monument, the first US national monument dedicated to LGBTQ history and rights, marking the birthplace of the modern lesbian, gay, bisexual, transgender, and queer civil rights movement, on June 1, 2020 in New York City. ANGELA WEISS/AFP via Getty Images

Texas Transgender ‘Abuse’ Policy Portends Biden Investigation

March 10, 2022, 5:40 AM

Listen

- Biden administration says state policy violates federal law
- Options for HHS response are limited, but DOJ could intervene

The administration has just two options to stop Texas from investigating families for child abuse if they are suspected of seeking gender-affirming care for transgender children—pulling federal health funding or suing the state.

Attorneys say both options are likely being discussed at the Departments of Justice and Health and Human Services, especially in light of strong statements and guidance opposing the state's actions by President Joe Biden and his agencies March 2.

A Texas judge last week issued an injunction against the state's child protective services agency temporarily blocking it from investigating the parents of a transgender teen for alleged child abuse.

Opponents of the Texas policy are waiting for more federal actions. New York Attorney General Letitia James called on the DOJ Wednesday to investigate Texas Gov. Greg Abbott's policy.

Advocates and former HHS officials said the likely road for the administration is an HHS or DOJ investigation and possible DOJ involvement in the ongoing litigation. Withdrawal of federal health funds for an entire state agency is possible, but it would be a "nuclear option," said Leon Rodriguez, who ran the HHS's Office of Civil Rights (OCR) under President Barack Obama. He's now a partner at Seyfarth Shaw LLP.

The OCR enforces Section 1557 of the Affordable Care Act, which "prohibits discrimination on the basis of race, color, national origin, sex, age, and disability in covered health programs or activities." It typically handles complaints about actions of individual health providers or hospitals. It rarely uses its enforcement power against an entire state's policy.

"Short of litigating or initiating funding removal or withdrawal proceedings, there's not a whole lot in their toolkit," said Joseph Wardenski, a former DOJ civil rights attorney.

A supporter of Texas's authority says the Biden administration is going too far by including transgender issues in the ACA's nondiscrimination clause. "I see no basis for them to be able to enforce Section 1557 against any state by reinterpreting sex to cover something that is not in the statute, which is what it sounds like they're trying to," said

Roger Severino, former Trump administration OCR director. “They’re on thin ice in their announcement suggesting they have an authority that is actually blocked by court injunctions.”

But, other observers like Katie Keith, director of the health policy and the law initiative at Georgetown Law’s O’Neill Institute, pointed out that the injunctions are fairly narrow and only applied to specific plaintiffs.

“I suspect the Administration is carefully weighing what else they can do and how quickly they can do it, looking for the widest positive impact while not creating challenges in other lawsuits,” Laura Durso, who was OCR chief of staff until earlier this year, said in an email.

The HHS actions thus far “made crystal clear that any enforcement of this policy violates multiple federal laws. In addition, HHS also mobilized its own law enforcement arm and invited parents who are targeted by this policy to bring individual complaints to HHS,” said Shannon Minter, legal director for the National Center for Lesbian Rights.

Gender-affirming care for children with gender dysphoria often includes puberty blocking drugs, which are reversible. Sex hormone treatment isn’t recommended until around the age of 16, when a minor has the mental capacity to give informed consent, under the Endocrine Society’s medical guidelines. And genital surgeries aren’t recommended, and typically aren’t available, until a patient has reached the age of 18.

Call for Complaints

HHS Secretary Xavier Becerra put out a rare call March 2 asking people in Texas to file complaints if they believe they were “being targeted by a child welfare investigation because of this discriminatory gubernatorial order.”

This is the “clearest invitation I’ve ever seen to a marginalized population to file complaints,” said Matthew Cortland, a senior resident fellow at Data for Progress working on disability and health care.

Getting these complaints would not only help the agency investigate allegations of federal law violations, but it could also help the agency as it prepares to come out with a new 1557 regulation.

Severino said a new regulation is the OCR's only option. "The only way I see for HHS to do anything in enforcement on gender identity is to pass a new regulation that would have to be upheld in court."

Regulations from both the Obama administration and Trump administration implementing Section 1557 are still tied up in court. Those court cases found that the word "sex" could not be interpreted to include gender identity in the regulations. However, the Biden administration announced in May 2021 that it would interpret "sex" in the statute itself to include gender identity in light of the Supreme Court's finding in *Bostock v. Clayton County*.

Complaint data "would give OCR more of a record to come out more strongly in rulemaking if they got a bunch of complaints," said Keith. That could lead to policies that "more directly combat" the actions by Texas and others like it.

Once the agency receives a complaint, it can investigate. If the OCR finds a civil rights violation occurred, it can file a complaint with an HHS administrative law judge. If the judge finds a violation, the HHS then has the authority to order various streams of federal funding be withheld, said Rodriguez.

The option to remove federal funds has "almost never been used. We only used it once during the time that I was director," and that was against an individual, he said

What "makes it a really brutal penalty is that it's everything. So there's no sliding scale here, there's no sentencing guidelines. This is a 100% withhold if it is implemented," Rodriguez said.

Lawsuit Involvement

The Biden administration could get involved in one other major way—a lawsuit.

The DOJ is probably waiting to see what happens in the Texas courts before getting involved. The existing case, backed by the ACLU and Lambda Legal, is going well so far for the plaintiffs, Wardenski said.

"Part of why the guidance OCR released is so powerful is that every move they make on this issue is heavily scrutinized and will be brought up in court," Durso said.

The DOJ could also file a statement of interest in this case, like it did in Arkansas when the state passed a law prohibiting gender-affirming care for transgender children, Keith said

The ACLU will be able to use the HHS guidance in its case, Cortland said. "HHS clearly staked out a position that providing supportive medical care to trans children is not abuse."

To contact the reporter on this story: Shira Stein in Washington at sstein@bloomberglaw.com

To contact the editor responsible for this story: Fawn Johnson at fjohnson@bloombergindustry.com

Melanie Fontes Rainer (she/her/ella)
Counselor to the Secretary
U.S. Department of Health and Human Services
Cell: (b)(6)
Melanie.Rainer@hhs.gov

From: Jones, Kamara (HHS/ASPA) <Kamara.Jones@hhs.gov>
Sent: Tuesday, March 8, 2022 10:37 PM
To: Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>; Silva, Jorge (HHS/ASPA) <Jorge.Silva@hhs.gov>; Eng, Adrian (HHS/ASPA) <Adrian.Eng@hhs.gov>
Subject: Re: Flag

I think it's worth reaching out and saying, "I heard you're writing. See our most recent statement and guidance." Is the story negative or positive toward the federal government?

Get [Outlook for iOS](#)

From: Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>
Sent: Tuesday, March 8, 2022 10:33:02 PM
To: Silva, Jorge (HHS/ASPA) <Jorge.Silva@hhs.gov>; Jones, Kamara (HHS/ASPA) <Kamara.Jones@hhs.gov>; Eng, Adrian (HHS/ASPA) <Adrian.Eng@hhs.gov>
Subject: Flag

Bloomberg is writing a story about Texas and federal govt response.

A friend on the outside flagged they reached out to her for comment. Not sure if we want to proactively reach out.

Flagging

Melanie

Sent from my iPhone

Sender:	Rainer, Melanie Fontes (OS/IOS) </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9C7242F10A494D45BAB72C452ECD9F80-RAINER, MEL>
Recipient:	Jones, Kamara (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=05cef78e341b467099676c353121c1ed-Jones, Kama <Kamara.Jones@hhs.gov>; Silva, Jorge (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e359ddd1d20843a0896fbd09dd8fed4d-Silva, Jorg <Jorge.Silva@hhs.gov>; Eng, Adrian (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=12aa973ac7274d72944c46da117a4179-Eng, Adrian <Adrian.Eng@hhs.gov>
Sent Date:	2022/03/10 09:44:49
Delivered Date:	2022/03/10 09:44:00

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

From: Rainer, Melanie Fontes (OS/OCR) </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9C7242F10A494D45BAB72C452ECD9F80-RAINER, MEL>
Seeger, Rachel (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3090ef9b170d45969add4ff475a95583-Rachel Seeg <Rachel.Seeger@hhs.gov>;
de Kervor, Dylan (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91-Dekervor, D <Dylan.Dekervor@hhs.gov>;
Jee, Lauren (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dc5a273e16824884903f0d2afc8cb225-Jee, Lauren <Lauren.Jee1@hhs.gov>
To:
Subject: RE: Timely: Bloomberg Request re Florida Board of Medicine Regulations
Date: 2023/03/16 11:04:00
Priority: Normal
Type: Note

(b)(5)

From: Seeger, Rachel (HHS/OCR) <Rachel.Seeger@hhs.gov>
Sent: Thursday, March 16, 2023 11:04 AM
To: Rainer, Melanie Fontes (OS/OCR) <Melanie.Rainer@hhs.gov>; de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>; Jee, Lauren (HHS/OCR) <Lauren.Jee1@hhs.gov>
Subject: FW: Timely: Bloomberg Request re Florida Board of Medicine Regulations

(b)(5)

From: Broido, Tara (HHS/OASH) <Tara.Broido@hhs.gov>
Sent: Thursday, March 16, 2023 10:51 AM
To: Kraus, John (HHS/ASPA) <John.Kraus@hhs.gov>; Eng, Adrian (HHS/ASPA) <Adrian.Eng@hhs.gov>; Zuniga, Ilse (HHS/ASPA) <Ilse.Zuniga@hhs.gov>; Burns, Samira (HHS/ASPA) <Samira.Burns@hhs.gov>
Cc: Seeger, Rachel (HHS/OCR) <Rachel.Seeger@hhs.gov>; Sarvana, Adam (HHS/OASH) <Adam.Sarvana@hhs.gov>; Seigfreid, Kimberly (HHS/OASH) <Kimberly.Seigfreid@hhs.gov>
Subject: FW: Timely: Bloomberg Request re Florida Board of Medicine Regulations

HI All,

(b)(5)

(b)(5)

Thanks,
Tara

From: Ella Ceron (BLOOMBERG/ NEWSROOM:) <eceron1@bloomberg.net>
Sent: Wednesday, March 15, 2023 1:18 PM
To: OPA Resource Mail <OPA@hhs.gov>
Subject: Timely: Bloomberg Request re Florida Board of Medicine Regulations

Hi there,

I'm a reporter at Bloomberg reaching out regarding the new standards of practice for treating gender dysphoria and other gender-affirming care for trans kids in Florida. As you may know, puberty blockers and other gender affirming care is set to be prohibited as of tomorrow, 3.16. This goes against the recommendations set out by the Office in its March 2022 guidance.

As such, does the Office have a statement regarding Florida's new regulations going into effect? My deadline is tomorrow, 03.16, if I can field a statement or chat with someone from the Office.

Alternatively if this request is better suited for a different branch, I welcome any redirects. I am also available at 212.617.1169 should you need to reach me via phone.

Thank you and all my best,
Ella

Ella Ceron
Trending Reporter, Equality
212.617.1169 (o)

Sender:	Rainer, Melanie Fontes (OS/OCR) </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9C7242F10A494D45BAB72C452ECD9F80-RAINER, MEL>
Recipient:	Seeger, Rachel (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3090ef9b170d45969add4ff475a95583-Rachel Seeg <Rachel.Seeger@hhs.gov>; de Kervor, Dylan (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91-Dekervor, D <Dylan.Dekervor@hhs.gov>;

Jee, Lauren (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=dc5a273e16824884903f0d2afc8cb225-Jee, Lauren
<Lauren.Jee1@hhs.gov>

Sent Date: 2023/03/16 11:04:51

Delivered Date: 2023/03/16 11:04:00

From:	Rainer, Melanie Fontes (OS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9c7242f10a494d45bab72c452ecd9f80-Rainer, Mel <Melanie.Rainer@hhs.gov>
To:	Seeger, Rachel (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3090ef9b170d45969add4ff475a95583-Rachel Seeg <Rachel.Seeger@hhs.gov>
CC:	Frohboese, Robinsue (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=57b8853f66da4cb99818c9e2632f77f8-Frohboese, <Robinsue.Frohboese@HHS.GOV>; Jee, Lauren (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dc5a273e16824884903f0d2afc8cb225-Jee, Lauren <Lauren.Jee1@hhs.gov>
Subject:	Re: Time Sensitive question about adding Texas Decision on OCR's Web
Date:	2022/10/04 09:35:31
Priority:	Normal
Type:	Note

(b)(5)

Get Outlook for iOS

From: Seeger, Rachel (HHS/OCR) <Rachel.Seeger@hhs.gov>

Sent: Tuesday, October 4, 2022 9:23:23 AM

To: Rainer, Melanie Fontes (OS/OCR) <Melanie.Rainer@hhs.gov>

Cc: Frohboese, Robinsue (HHS/OCR) <Robinsue.Frohboese@HHS.GOV>; Jee, Lauren (HHS/OCR) <Lauren.Jee1@hhs.gov>

Subject: RE: Time Sensitive question about adding Texas Decision on OCR's Web

Hi Melanie,

(b)(5)

(b)(5)

Best,
Rachel

From: Rainer, Melanie Fontes (OS/OCR) <Melanie.Rainer@hhs.gov>
Sent: Monday, October 3, 2022 10:18 PM
To: Seeger, Rachel (HHS/OCR) <Rachel.Seeger@hhs.gov>; Jee, Lauren (HHS/OCR) <Lauren.Jee1@hhs.gov>
Cc: Frohboese, Robinsue (HHS/OCR) <Robinsue.Frohboese@HHS.GOV>
Subject: Re: Time Sensitive question about adding Texas Decision on OCR's Web

(b)(5)

Get [Outlook for iOS](#)

From: Seeger, Rachel (HHS/OCR) <Rachel.Seeger@hhs.gov>
Sent: Monday, October 3, 2022 9:50:04 PM
To: Rainer, Melanie Fontes (OS/OCR) <Melanie.Rainer@hhs.gov>; Jee, Lauren (HHS/OCR) <Lauren.Jee1@hhs.gov>
Cc: Frohboese, Robinsue (HHS/OCR) <Robinsue.Frohboese@HHS.GOV>
Subject: Re: Time Sensitive question about adding Texas Decision on OCR's Web

I am available at your convenience. (b)(6)

(b)(6)

Thanks.

Get [Outlook for iOS](#)

From: Rainer, Melanie Fontes (OS/OCR) <Melanie.Rainer@hhs.gov>
Sent: Monday, October 3, 2022 9:48 PM
To: Seeger, Rachel (HHS/OCR) <Rachel.Seeger@hhs.gov>; Jee, Lauren (HHS/OCR) <Lauren.Jee1@hhs.gov>
Cc: Frohboese, Robinsue (HHS/OCR) <Robinsue.Frohboese@HHS.GOV>
Subject: Fwd: Time Sensitive question about adding Texas Decision on OCR's Web

Let's talk about this tomorrow

Get [Outlook for iOS](#)

From: Greenberg, Mark H (HHS/OGC) <MarkH.Greenberg@hhs.gov>
Sent: Monday, October 3, 2022 8:33:09 PM
To: Schuham, Aaron (HHS/OGC) <Aaron.Schuham@hhs.gov>; Wiggins, Audrey (HHS/OGC) <Audrey.Wiggins@hhs.gov>; Frohboese, Robinsue (HHS/OCR) <Robinsue.Frohboese@HHS.GOV>; Rainer, Melanie Fontes (OS/OCR) <Melanie.Rainer@hhs.gov>; Seeger, Rachel (HHS/OCR) <Rachel.Seeger@hhs.gov>; Bagenstos, Samuel (HHS/OGC) <Samuel.Bagenstos@hhs.gov>
Subject: Re: Time Sensitive question about adding Texas Decision on OCR's Web

Agree.

Mark Greenberg (he/him)
Deputy General Counsel
Office of General Counsel
Department of Health and Human Services
Markh.greenberg@hhs.gov
(202) 913-5407

From: Schuham, Aaron (HHS/OGC) <Aaron.Schuham@hhs.gov>
Sent: Monday, October 3, 2022 8:31:29 PM
To: Wiggins, Audrey (HHS/OGC) <Audrey.Wiggins@hhs.gov>; Frohboese, Robinsue (HHS/OCR) <Robinsue.Frohboese@HHS.GOV>; Rainer, Melanie Fontes (OS/OCR) <Melanie.Rainer@hhs.gov>; Seeger, Rachel (HHS/OCR) <Rachel.Seeger@hhs.gov>; Bagenstos, Samuel (HHS/OGC) <Samuel.Bagenstos@hhs.gov>; Greenberg, Mark H (HHS/OGC) <MarkH.Greenberg@hhs.gov>
Subject: Re: Time Sensitive question about adding Texas Decision on OCR's Web

Agree.

From: Wiggins, Audrey (HHS/OGC) <Audrey.Wiggins@hhs.gov>
Sent: Monday, October 3, 2022 7:40 PM
To: Frohboese, Robinsue (HHS/OCR) <Robinsue.Frohboese@HHS.GOV>; Rainer, Melanie Fontes (OS/OCR) <Melanie.Rainer@hhs.gov>; Seeger, Rachel (HHS/OCR) <Rachel.Seeger@hhs.gov>; Schuham, Aaron (HHS/OGC) <Aaron.Schuham@hhs.gov>; Bagenstos, Samuel (HHS/OGC) <Samuel.Bagenstos@hhs.gov>; Greenberg, Mark H (HHS/OGC) <MarkH.Greenberg@hhs.gov>
Subject: RE: Time Sensitive question about adding Texas Decision on OCR's Web

(b)(5)

From: Frohboese, Robinsue (HHS/OCR) <Robinsue.Frohboese@HHS.GOV>
Sent: Monday, October 3, 2022 7:37 PM
To: Rainer, Melanie Fontes (OS/OCR) <Melanie.Rainer@hhs.gov>; Wiggins, Audrey (HHS/OGC) <Audrey.Wiggins@hhs.gov>; Seeger, Rachel (HHS/OCR) <Rachel.Seeger@hhs.gov>; Schuham, Aaron (HHS/OGC) <Aaron.Schuham@hhs.gov>
Subject: RE: Time Sensitive question about adding Texas Decision on OCR's Web

(b)(5)

From: Rainer, Melanie Fontes (OS/OCR) <Melanie.Rainer@hhs.gov>
Sent: Monday, October 3, 2022 7:31 PM
To: Wiggins, Audrey (HHS/OGC) <Audrey.Wiggins@hhs.gov>; Frohboese, Robinsue (HHS/OCR) <Robinsue.Frohboese@HHS.GOV>; Seeger, Rachel (HHS/OCR) <Rachel.Seeger@hhs.gov>; Schuham, Aaron (HHS/OGC) <Aaron.Schuham@hhs.gov>
Subject: Re: Time Sensitive question about adding Texas Decision on OCR's Web

Can someone answer my question first please?

Thanks.

Get [Outlook for iOS](#)

From: Wiggins, Audrey (HHS/OGC) <Audrey.Wiggins@hhs.gov>
Sent: Monday, October 3, 2022 6:59:19 PM
To: Frohboese, Robinsue (HHS/OCR) <Robinsue.Frohboese@HHS.GOV>; Seeger, Rachel (HHS/OCR) <Rachel.Seeger@hhs.gov>; Rainer, Melanie Fontes (OS/OCR) <Melanie.Rainer@hhs.gov>; Schuham, Aaron (HHS/OGC) <Aaron.Schuham@hhs.gov>
Subject: RE: Time Sensitive question about adding Texas Decision on OCR's Web

That works for us, Robinsue.

From: Frohboese, Robinsue (HHS/OCR) <Robinsue.Frohboese@HHS.GOV>
Sent: Monday, October 3, 2022 6:57 PM
To: Wiggins, Audrey (HHS/OGC) <Audrey.Wiggins@hhs.gov>; Seeger, Rachel (HHS/OCR) <Rachel.Seeger@hhs.gov>; Rainer, Melanie Fontes (OS/OCR) <Melanie.Rainer@hhs.gov>; Schuham, Aaron (HHS/OGC) <Aaron.Schuham@hhs.gov>
Subject: RE: Time Sensitive question about adding Texas Decision on OCR's Web

(b)(5)

(b)(5)

Rachel is on standby and ready to post once we get the final ok. Thanks, Robinsue

From: Wiggins, Audrey (HHS/OGC) <Audrey.Wiggins@hhs.gov>

Sent: Monday, October 3, 2022 6:44 PM

To: Seeger, Rachel (HHS/OCR) <Rachel.Seeger@hhs.gov>; Rainer, Melanie Fontes (OS/OCR) <Melanie.Rainer@hhs.gov>; Schuham, Aaron (HHS/OGC) <Aaron.Schuham@hhs.gov>; Frohboese, Robinsue (HHS/OCR) <Robinsue.Frohboese@HHS.GOV>

Subject: RE: Time Sensitive question about adding Texas Decision on OCR's Web

Mahalo, Rachel! As Sam stated earlier, the court vacated the March 2022 guidance on gender-affirming care (this document: [HHS Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy](#)).

From: Seeger, Rachel (HHS/OCR) <Rachel.Seeger@hhs.gov>

Sent: Monday, October 3, 2022 6:37 PM

To: Wiggins, Audrey (HHS/OGC) <Audrey.Wiggins@hhs.gov>; Rainer, Melanie Fontes (OS/OCR) <Melanie.Rainer@hhs.gov>; Schuham, Aaron (HHS/OGC) <Aaron.Schuham@hhs.gov>; Frohboese, Robinsue (HHS/OCR) <Robinsue.Frohboese@HHS.GOV>

Subject: RE: Time Sensitive question about adding Texas Decision on OCR's Web

Just to clarify, the GAC guidance document includes HIPAA content, which is why it is on the HIPAA Special Topics page.

From: Wiggins, Audrey (HHS/OGC) <Audrey.Wiggins@hhs.gov>

Sent: Monday, October 3, 2022 6:34 PM

To: Rainer, Melanie Fontes (OS/OCR) <Melanie.Rainer@hhs.gov>; Schuham, Aaron (HHS/OGC) <Aaron.Schuham@hhs.gov>; Frohboese, Robinsue (HHS/OCR) <Robinsue.Frohboese@HHS.GOV>

Cc: Seeger, Rachel (HHS/OCR) <Rachel.Seeger@hhs.gov>

Subject: RE: Time Sensitive question about adding Texas Decision on OCR's Web

(b)(5)

From: Rainer, Melanie Fontes (OS/OCR) <Melanie.Rainer@hhs.gov>

Sent: Monday, October 3, 2022 6:29 PM

To: Schuham, Aaron (HHS/OGC) <Aaron.Schuham@hhs.gov>; Wiggins, Audrey (HHS/OGC) <Audrey.Wiggins@hhs.gov>; Frohboese, Robinsue (HHS/OCR) <Robinsue.Frohboese@HHS.GOV>

Cc: Seeger, Rachel (HHS/OCR) <Rachel.Seeger@hhs.gov>

Subject: Re: Time Sensitive question about adding Texas Decision on OCR's Web

(b)(5)

Get [Outlook for iOS](#)

From: Schuham, Aaron (HHS/OGC) <Aaron.Schuham@hhs.gov>
Sent: Monday, October 3, 2022 6:26:06 PM
To: Wiggins, Audrey (HHS/OGC) <Audrey.Wiggins@hhs.gov>; Frohboese, Robinsue (HHS/OCR) <Robinsue.Frohboese@HHS.GOV>
Cc: Rainer, Melanie Fontes (OS/OCR) <Melanie.Rainer@hhs.gov>; Seeger, Rachel (HHS/OCR) <Rachel.Seeger@hhs.gov>
Subject: Re: Time Sensitive question about adding Texas Decision on OCR's Web

Thanks Audrey

Get [Outlook for iOS](#)

From: Wiggins, Audrey (HHS/OGC) <Audrey.Wiggins@hhs.gov>
Sent: Monday, October 3, 2022 6:23 PM
To: Frohboese, Robinsue (HHS/OCR) <Robinsue.Frohboese@HHS.GOV>; Schuham, Aaron (HHS/OGC) <Aaron.Schuham@hhs.gov>
Cc: Rainer, Melanie Fontes (OS/OCR) <Melanie.Rainer@hhs.gov>; Seeger, Rachel (HHS/OCR) <Rachel.Seeger@hhs.gov>
Subject: RE: Time Sensitive question about adding Texas Decision on OCR's Web

(b)(5)

(b)(5)

Thanks!.

From: Frohboese, Robinsue (HHS/OCR) <Robinsue.Frohboese@HHS.GOV>
Sent: Monday, October 3, 2022 5:59 PM
To: Schuham, Aaron (HHS/OGC) <Aaron.Schuham@hhs.gov>; Wiggins, Audrey (HHS/OGC) <Audrey.Wiggins@hhs.gov>
Cc: Rainer, Melanie Fontes (OS/OCR) <Melanie.Rainer@hhs.gov>; Seeger, Rachel (HHS/OCR) <Rachel.Seeger@hhs.gov>
Subject: Time Sensitive question about adding Texas Decision on OCR's Web
Importance: High

Hi Aaron and Audrey,

(b)(5)

(b)(5)

We're ready to post it either way once we hear back from you. Many thanks, Robinsue

Sender:	Rainer, Melanie Fontes (OS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9c7242f10a494d45bab72c452ecd9f80-Rainer, Mel <Melanie.Rainer@hhs.gov>
Recipient:	Seeger, Rachel (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3090ef9b170d45969add4ff475a95583-Rachel Seeg <Rachel.Seeger@hhs.gov>; Frohboese, Robinsue (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=57b8853f66da4cb99818c9e2632f77f8-Frohboese, <Robinsue.Frohboese@HHS.GOV>; Jee, Lauren (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dc5a273e16824884903f0d2afc8cb225-Jee, Lauren <Lauren.Jee1@hhs.gov>
Sent Date:	2022/10/04 09:35:29
Delivered Date:	2022/10/04 09:35:31

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

From:	Rainer, Melanie Fontes (OS/IOS) </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9C7242F10A494D45BAB72C452ECD9F80-RAINER, MEL>
To:	(b)(6) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e7e93b3e7f2b458c87175518d9584d01 (b)(6) (b)(6)
CC:	Jones, Kamara (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=05cef78e341b467099676c353121c1ed-Jones, Kama <Kamara.Jones@hhs.gov>; Lovenheim, Sarah (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=47f3afc033df47b1aaa46c8e43961db5-Goldfarb, S <Sarah.Lovenheim@hhs.gov>; Silva, Jorge (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e359ddd1d20843a0896fbd09dd8fed4d-Silva, Jorg <Jorge.Silva@hhs.gov>; Mccluskie, Sean (HHS/IOS) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2357b6b202dd4e049b1ea05d63172060-Mccluskie, <Sean.Mccluskie@hhs.gov>; Ramirez, Angela (HHS/IOS) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6048cf978c14b6aa77be44bb2c618e0-Ramirez, Ari <Angela.Ramirez@hhs.gov>; Wolff, Kate (ACF) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b507d714e0e040739beafa5879521e8a-Wolff, Kath <Kate.Wolff@acf.hhs.gov>
Subject:	Texas Actions--Time Sensitive Materials
Date:	2022/03/02 17:35:00
Importance:	High
Priority:	Urgent
Type:	Note

Good evening Sir,

I am flagging that yesterday the ACLU filed a lawsuit in state court on behalf of four parents that were investigated by Texas Child Protective Services (CPS). 2 of the 4 parents were employees of the Texas CPS who had been vocal about their children receiving gender affirming care. TX CPS went to parent's homes and demanded kids medical records (b)(5)

(b)(5)

Melanie

“The Texas government’s attacks against transgender youth and those who love and care for them are discriminatory and unconscionable. These actions are clearly dangerous to the health of transgender youth in Texas. At HHS, we listen to medical experts and doctors, and they agree with us, that access to affirming care for transgender youth is essential and can be life-saving.

“HHS is committed to protecting young Americans who are targeted because of their sexual orientation or gender identity, and supporting their parents, caretakers and families. That is why I directed my team to evaluate the tools at our disposal to protect trans and gender diverse youth in Texas, and today I am announcing several steps we can take to protect them.

“HHS will take immediate action if needed. I know that many youth and their supportive families are feeling scared and isolated because of these attacks. HHS is closely monitoring the situation in Texas, and will use every tool at our disposal to keep Texans safe.

“Any individual or family in Texas who is being targeted by a child welfare investigation because of this discriminatory gubernatorial order is encouraged to contact our Office for Civil Rights to report their experience.”

New HHS Actions Announced by Secretary Xavier Becerra:

- HHS is releasing guidance to state child welfare agencies through an Information Memorandum [Insert Link] that makes clear that states should use their child welfare systems to advance safety and support for LGBTQI+ youth, which importantly can include access to gender affirming care;
- HHS is also releasing guidance [Insert Link] on patient privacy, clarifying that, despite the Texas government’s threat, health care providers are not required to disclose private patient information related to gender affirming care;
- HHS also issued guidance making clear that denials of health care based on gender identity are illegal, as is restricting doctors and health care providers from providing care because of a patient’s gender identity;
- The Secretary also called on all of HHS to explore all options to protect kids, their parents, caretakers and families; and
- HHS will also ensure that families and health care providers in Texas are aware of all the resources available to them if they face discrimination as a result of this discriminatory gubernatorial order.

If you believe that you or another party has been discriminated against on the basis of gender identity or disability in seeking to access gender affirming health care, visit the [OCR complaint portal](#) to file a complaint online.

If you have questions regarding patient privacy laws, please reach out to the Office for Civil Rights email: OCRPrivacy@hhs.gov or call Toll-free: (800) 368-1019

Resources for kids, parents, caretakers and families:

- SAMHSA supports the [Center of Excellence on LGBTQ+ Behavioral Health Equity](#), which provides behavioral health practitioners with vital information on supporting the population of people identifying as lesbian, gay, bisexual, transgender, queer, questioning, intersex, two-spirit, and other diverse sexual orientations, gender identities and expressions. The Center's website includes a recorded webinar on Gender Identity, Expression & Behavioral Health 101. Upcoming webinars will include topics such as: How to Signal to Youth that You are an LGBTQ+ Affirming Provider; How to Respond When a Young Person Discloses their SOGIE; Supporting Families of LGBTQ+ Youth; and Safety Planning for LGBTQ+ Students.
- [A Practitioner's Resource Guide: Helping Families to Support Their LGBT Children](#) is a resource guide developed by SAMHSA that offers information and resources to help practitioners throughout health and social service systems implement best practices in engaging and helping families and caregivers to support their lesbian, gay, bisexual, and transgender (LGBT) children.

Texas judge to issue ruling on ACLU's request for temporary restraining order on child abuse investigations of trans children and their parents

By [Amir Vera](#), [Ashley Killough](#) and [Ed Lavandera](#), CNN

Updated 4:11 PM ET, Wed March 2, 2022

Texas Gov. Greg Abbott, left, speaks alongside state Attorney General Ken Paxton at a joint news conference in 2015 in Austin, Texas.

(CNN) A district court judge in Travis County, Texas, is expected to issue a ruling later Wednesday on whether she'll grant a temporary restraining order to prevent the state from [performing child abuse investigations](#) of families seeking gender-affirming health care for their transgender children.

Judge Amy Clark Meachum of the 201st Civil District Court heard arguments Wednesday morning from a lawyer with Lambda Legal, an LGBTQ civil rights organization, asking for a temporary restraining order as part of its lawsuit with the ACLU claiming the state's Department of Family and Protective Services (DFPS) had already begun investigating the families of transgender teens.

[Texas Attorney General Ken Paxton issued a public legal opinion last week](#) saying gender-affirming treatments and procedures for transgender children can constitute a form of child abuse. The legal opinion prompted Gov. Greg Abbott to instruct DFPS Commissioner Jaime Masters "to conduct a prompt and thorough investigation of any reported instances of these abusive procedures in the State of Texas."

Abbott and Paxton were listed as candidates in [the Republican primary](#) that took place Tuesday. Abbott won the gubernatorial primary, and Paxton will advance to a runoff.

Lawsuit filed on behalf of DFPS employee

According to the lawsuit filed by the ACLU and Lambda Legal, the plaintiffs are identified as clinical psychologist Dr. Megan Mooney and the "supportive" parents, "Jane and John Doe," individually and as next friends of "Mary Doe," a 16-year-old transgender girl who has been diagnosed with gender dysphoria. Gender dysphoria is psychological distress that results when a person's gender identity and sex assigned at birth do not align, according to the American Psychiatric Association.

Jane Doe, an employee of DFPS, asked her employer to clarify how the governor's order would affect the agency's policy, according to the lawsuit. She was then placed on leave "because she has a transgender daughter with a medical need for treatment of gender dysphoria," the suit said. DFPS Child Protective Services visited the plaintiffs' home after being informed they were under investigation, the suit said.

-

Texas AG declares pediatric gender-affirming procedures to be child abuse, legal opinion says

Jane Doe is on leave pending the results of the DFPS investigation, court documents say. Should the investigation find the parents committed abuse, they would be put on the Child Abuse Registry "and be improperly subject to all of the effects that flow from such placement," according to the lawsuit. Jane Doe could also face termination and, as a result, lose the family's health care coverage, the lawsuit said.

The plaintiffs accuse Abbott and Masters of attempting "to legislate by press release" after the Texas legislature "failed to pass legislation criminalizing well-established and medically necessary treatment for adolescents with gender dysphoria."

CNN has reached out to the governor's office, Masters and Paxton for comment.

Attorneys argue about the language of Paxton's legal opinion

The attorney for Lambda Legal, Paul Castillo, argued his clients face immediate and irreparable harm from the investigations. He said he's aware of at least two other families, in addition to the family mentioned in the lawsuit, who are facing investigations.

-

This Texas mom says she's moving her family to California to protect her transgender daughter

Ryan Kercher, an attorney with Paxton's office, argued the state is not seeking to investigate "every trans youth or every ... young person undergoing these kinds of treatments and procedures." Kercher argued the opinion's language is intentionally "couched" to say that this kind of health care "could be" or "can be" a form of child abuse, especially if there is a "lack of consent."

The judge said she'll issue her decision later Wednesday after fully reviewing the arguments and documentation.

CNN's Gregory Lemos, Andy Rose and Raja Razek contributed to this report.

Melanie Fontes Rainer (she/her/ella)

Counselor to the Secretary

U.S. Department of Health and Human Services

Cell: (b)(6)



Melanie.Rainer@hhs.gov

Sender:	Rainer, Melanie Fontes (OS/IOS) </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9C7242F10A494D45BAB72C452ECD9F80-RAINER, MEL>
	(b)(6) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e7e93b3e7f2b458c87175518d9584d01 (b)(6);
	Jones, Kamara (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=05cef78e341b467099676c353121c1ed-Jones, Kama <Kamara.Jones@hhs.gov>;
	Lovenheim, Sarah (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=47f3afc033df47b1aaa46c8e43961db5-Goldfarb, S <Sarah.Lovenheim@hhs.gov>;
Recipient:	Silva, Jorge (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e359ddd1d20843a0896fbd09dd8fed4d-Silva, Jorg <Jorge.Silva@hhs.gov>;
	Mccluskie, Sean (HHS/IOS) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2357b6b202dd4e049b1ea05d63172060-Mccluskie, <Sean.Mccluskie@hhs.gov>;
	Ramirez, Angela (HHS/IOS) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6048cf978c14b6aa77be44bb2c618e0-Ramirez, An <Angela.Ramirez@hhs.gov>;
	Wolff, Kate (ACF) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b507d714e0e040739beafa5879521e8a-Wolff, Kath <Kate.Wolff@acf.hhs.gov>
Sent Date:	2022/03/02 17:35:05
Delivered Date:	2022/03/02 17:35:00

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

From:	Rainer, Melanie Fontes (OS/IOS) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9c7242f10a494d45bab72c452ecd9f80-Rainer, Mel <Melanie.Rainer@hhs.gov>
To:	Lynk, Beth (CMS/OC) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0a669e91bf954cd79ed93895a3c8639d-L7ZE <Florence.Lynk@cms.hhs.gov>; Rodriguez, Paul (HHS/OGC) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=755d69b6e04e4aa8981d68258e0aaf7c-Rodriguez, <PaulR.Rodriguez@hhs.gov>; (b)(6) (b)(6) (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91(b)(6) (b)(6) Ciccone, Caroline (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cc80a60f39a84204ad7c4191575500ec-Ciccone, Ca <Caroline.Ciccone@hhs.gov>; Pryor, Rachel (HHS/OS/IOS) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1e87a6df2de041fcb673dd5e40029b87-Pryor, Rach <Rachel.Pryor@hhs.gov>; Smalley, Elizabeth (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=546fd81600e14830903adb3af34663f1-Smalley, El <Elizabeth.Smalley@hhs.gov>; Bagenstos, Samuel (HHS/OGC) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=afa71ea876614421a32eee5049c60e45-Bagenstos, <Samuel.Bagenstos@hhs.gov>; Katch, Hannah (CMS/OA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4ac6b74b459a46aaa7e997cb9e74a848-KSDJ <Hannah.Katch@cms.hhs.gov>
CC:	Jones, Kamara (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=05cef78e341b467099676c353121c1ed-Jones, Kama <Kamara.Jones@hhs.gov>; Broido, Tara (HHS/OASH) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2c3cd5c5afe049b6a8b48c25324c7465-Broido, Tar <Tara.Broido@hhs.gov>
Subject:	Re: For Hannah and Beth Review ASAP - Media Inquires: Fox Digital & Los Angeles Blade Florida decision regarding gender-affirming care in Medicaid
Date:	2022/08/14 16:31:09
Priority:	Normal
Type:	Note

(b)(5)

Get Outlook for iOS

From: Lynk, Beth (CMS/OC) <Florence.Lynk@cms.hhs.gov>

Sent: Sunday, August 14, 2022 3:41:09 PM

To: Rodriguez, Paul (HHS/OGC) <PaulR.Rodriguez@hhs.gov>; (b)(6) (b)(6) (HHS/OCR)

(b)(6) Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>; Ciccone, Caroline (HHS/ASPA) <Caroline.Ciccone@hhs.gov>; Pryor, Rachel (HHS/OS/IOS) <Rachel.Pryor@hhs.gov>; Smalley, Elizabeth (HHS/ASPA) <Elizabeth.Smalley@hhs.gov>; Bagenstos, Samuel (HHS/OGC) <Samuel.Bagenstos@hhs.gov>; Katch, Hannah (CMS/OA) <Hannah.Katch@cms.hhs.gov>

Cc: Jones, Kamara (HHS/ASPA) <Kamara.Jones@hhs.gov>; Broido, Tara (HHS/OASH) <Tara.Broido@hhs.gov>

Subject: Re: For Hannah and Beth Review ASAP - Media Inquires: Fox Digital & Los Angeles Blade | Florida decision regarding gender-affirming care in Medicaid

Thanks!

Beth Lynk

Office of the Administrator

Centers for Medicare & Medicaid Services

From: Rodriguez, Paul (HHS/OGC) <PaulR.Rodriguez@hhs.gov>

Sent: Sunday, August 14, 2022 1:33:25 PM

To: (b) (b)(6) (b)(6) (HHS/OCR) (b)(6) Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>; Lynk, Beth (CMS/OC) <Florence.Lynk@cms.hhs.gov>; Ciccone, Caroline (HHS/ASPA) <Caroline.Ciccone@hhs.gov>; Pryor, Rachel (HHS/OS/IOS) <Rachel.Pryor@hhs.gov>; Smalley, Elizabeth (HHS/ASPA) <Elizabeth.Smalley@hhs.gov>; Bagenstos, Samuel (HHS/OGC) <Samuel.Bagenstos@hhs.gov>; Katch, Hannah (CMS/OA) <Hannah.Katch@cms.hhs.gov>
Cc: Jones, Kamara (HHS/ASPA) <Kamara.Jones@hhs.gov>; Broido, Tara (HHS/OASH) <Tara.Broido@hhs.gov>

Subject: Re: For Hannah and Beth Review ASAP - Media Inquires: Fox Digital & Los Angeles Blade | Florida decision regarding gender-affirming care in Medicaid

Ok here.

Paul R. Rodríguez

Deputy General Counsel

U.S. Department of Health and Human Services

(b)(6) (cell)

From: (b) (b)(6) (b)(6) (HHS/OCR) (b)(6)

Sent: Friday, August 12, 2022 10:55 PM

To: Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>; Lynk, Beth (CMS/OC) <Florence.Lynk@cms.hhs.gov>; Ciccone, Caroline (HHS/ASPA) <Caroline.Ciccone@hhs.gov>; Pryor, Rachel (HHS/OS/IOS) <Rachel.Pryor@hhs.gov>; Smalley, Elizabeth (HHS/ASPA) <Elizabeth.Smalley@hhs.gov>; Rodriguez, Paul (HHS/OGC) <PaulR.Rodriguez@hhs.gov>; Bagenstos, Samuel (HHS/OGC) <Samuel.Bagenstos@hhs.gov>; Katch, Hannah (CMS/OA) <Hannah.Katch@cms.hhs.gov>

Cc: Jones, Kamara (HHS/ASPA) <Kamara.Jones@hhs.gov>; Broido, Tara (HHS/OASH) <Tara.Broido@hhs.gov>

Subject: Re: For Hannah and Beth Review ASAP - Media Inquires: Fox Digital & Los Angeles Blade | Florida decision regarding gender-affirming care in Medicaid

Confirming that OCR received the below:

From: Musto, Julia <Julia.Musto@FOX.COM>

Sent: Friday, August 12, 2022 9:50 AM

To: OS OCR Media (OS/OCR) <ocrmedia@hhs.gov>

Subject: Comment for Fox News Digital

re

I'm writing to you today regarding a report that the Florida Agency for Health Care Administration has finalized rules that block Medicaid coverage for the treatment of gender dysphoria.

<https://www.politico.com/news/2022/08/11/florida-finalizes-ban-medicaid-transgender-treatments-00051259>

Previously, the state's health department called HHS guidance on the matter misleading.

Does HHS have a comment for us today?

Thank you so much for your time and assistance.

Best,
Julia

(b)(6) (b)(6) (b)(6) (she/her)
(b)(6)

From: Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>
Sent: Friday, August 12, 2022 9:14:09 PM
To: Lynk, Beth (CMS/OC) <Florence.Lynk@cms.hhs.gov>; Ciccone, Caroline (HHS/ASPA) <Caroline.Ciccone@hhs.gov>; Pryor, Rachel (HHS/OS/IOS) <Rachel.Pryor@hhs.gov>; Smalley, Elizabeth (HHS/ASPA) <Elizabeth.Smalley@hhs.gov>; Rodriguez, Paul (HHS/OGC) <PaulR.Rodriguez@hhs.gov>; Bagenstos, Samuel (HHS/OGC) <Samuel.Bagenstos@hhs.gov>; Katch, Hannah (CMS/OA) <Hannah.Katch@cms.hhs.gov>
Cc: (b)(6) (b)(6) (b)(6) (HHS/OCR) (b)(6) Jones, Kamara (HHS/ASPA) <Kamara.Jones@hhs.gov>; Broido, Tara (HHS/OASH) <Tara.Broido@hhs.gov>
Subject: Re: For Hannah and Beth Review ASAP - Media Inquires: Fox Digital & Los Angeles Blade | Florida decision regarding gender-affirming care in Medicaid

ASPA I think OCR also got this question.

Get Outlook for iOS

From: Lynk, Beth (CMS/OC) <Florence.Lynk@cms.hhs.gov>
Sent: Friday, August 12, 2022 8:00:14 PM
To: Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>; Ciccone, Caroline (HHS/ASPA) <Caroline.Ciccone@hhs.gov>; Pryor, Rachel (HHS/OS/IOS) <Rachel.Pryor@hhs.gov>; Smalley, Elizabeth (HHS/ASPA) <Elizabeth.Smalley@hhs.gov>; Rodriguez, Paul (HHS/OGC) <PaulR.Rodriguez@hhs.gov>; Bagenstos, Samuel (HHS/OGC) <Samuel.Bagenstos@hhs.gov>; Katch, Hannah (CMS/OA) <Hannah.Katch@cms.hhs.gov>
Cc: (b)(6) (b)(6) (b)(6) (HHS/OCR) (b)(6) Jones, Kamara (HHS/ASPA) <Kamara.Jones@hhs.gov>; Broido, Tara (HHS/OASH) <Tara.Broido@hhs.gov>
Subject: Re: For Hannah and Beth Review ASAP - Media Inquires: Fox Digital & Los Angeles Blade | Florida decision regarding gender-affirming care in Medicaid

Update here. This is what we are now looking to send. Thanks!

(b)(5)

Beth Lynk

Office of the Administrator

Centers for Medicare & Medicaid Services

From: Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>

Sent: Friday, August 12, 2022 5:43:45 PM

To: Ciccone, Caroline (HHS/ASPA) <Caroline.Ciccone@hhs.gov>; Lynk, Beth (CMS/OC)

<Florence.Lynk@cms.hhs.gov>; Pryor, Rachel (HHS/OS/IOS) <Rachel.Pryor@hhs.gov>; Smalley, Elizabeth

(HHS/ASPA) <Elizabeth.Smalley@hhs.gov>; Rodriguez, Paul (HHS/OGC) <PaulR.Rodriguez@hhs.gov>;

Bagenstos, Samuel (HHS/OGC) <Samuel.Bagenstos@hhs.gov>

Cc: (b) (b)(6) (b)(6) (HHS/OCR) (b)(6) Jones, Kamara (HHS/ASPA)

<Kamara.Jones@hhs.gov>; Broido, Tara (HHS/OASH) <Tara.Broido@hhs.gov>

Subject: RE: For Hannah and Beth Review ASAP - Media Inquires: Fox Digital & Los Angeles Blade | Florida decision regarding gender-affirming care in Medicaid

Sam and Paul here too.

From: Ciccone, Caroline (HHS/ASPA) <Caroline.Ciccone@hhs.gov>

Sent: Friday, August 12, 2022 5:39 PM

To: Lynk, Beth (CMS/OC) <Florence.Lynk@cms.hhs.gov>; Pryor, Rachel (HHS/OS/IOS)

<Rachel.Pryor@hhs.gov>; Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>; Smalley,

Elizabeth (HHS/ASPA) <Elizabeth.Smalley@hhs.gov>

Cc: (b) (b)(6) (b)(6) (HHS/OCR) (b)(6) Jones, Kamara (HHS/ASPA)

<Kamara.Jones@hhs.gov>; Broido, Tara (HHS/OASH) <Tara.Broido@hhs.gov>

Subject: RE: For Hannah and Beth Review ASAP - Media Inquires: Fox Digital & Los Angeles Blade | Florida decision regarding gender-affirming care in Medicaid

Plus Tara

From: Lynk, Beth (CMS/OC) <Florence.Lynk@cms.hhs.gov>

Sent: Friday, August 12, 2022 5:39 PM

To: Pryor, Rachel (HHS/OS/IOS) <Rachel.Pryor@hhs.gov>; Rainer, Melanie Fontes (OS/IOS)

<Melanie.Rainer@hhs.gov>; Smalley, Elizabeth (HHS/ASPA) <Elizabeth.Smalley@hhs.gov>; Ciccone,

Caroline (HHS/ASPA) <Caroline.Ciccone@hhs.gov>

Cc: (b) (b)(6) (b)(6) (HHS/OCR) (b)(6) Jones, Kamara (HHS/ASPA)

<Kamara.Jones@hhs.gov>

Subject: RE: For Hannah and Beth Review ASAP - Media Inquires: Fox Digital & Los Angeles Blade | Florida decision regarding gender-affirming care in Medicaid

I have not.

From: Pryor, Rachel (HHS/OS/IOS) <Rachel.Pryor@hhs.gov>
Sent: Friday, August 12, 2022 5:38 PM
To: Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>; Lynk, Beth (CMS/OC) <Florence.Lynk@cms.hhs.gov>; Smalley, Elizabeth (HHS/ASPA) <Elizabeth.Smalley@hhs.gov>; Ciccone, Caroline (HHS/ASPA) <Caroline.Ciccone@hhs.gov>
Cc: (b) (b)(6) (b)(6) (HHS/OCR) (b)(6) Jones, Kamara (HHS/ASPA) <Kamara.Jones@hhs.gov>
Subject: Re: For Hannah and Beth Review ASAP - Media Inquires: Fox Digital & Los Angeles Blade | Florida decision regarding gender-affirming care in Medicaid

Has anyone talked to WH comms or OASH comms?

Get Outlook for iOS

From: Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>
Sent: Friday, August 12, 2022 5:35:04 PM
To: Lynk, Beth (CMS/OC) <Florence.Lynk@cms.hhs.gov>; Pryor, Rachel (HHS/OS/IOS) <Rachel.Pryor@hhs.gov>; Smalley, Elizabeth (HHS/ASPA) <Elizabeth.Smalley@hhs.gov>; Ciccone, Caroline (HHS/ASPA) <Caroline.Ciccone@hhs.gov>
Cc: (b) (b)(6) (b)(6) (HHS/OCR) (b)(6) Jones, Kamara (HHS/ASPA) <Kamara.Jones@hhs.gov>
Subject: RE: For Hannah and Beth Review ASAP - Media Inquires: Fox Digital & Los Angeles Blade | Florida decision regarding gender-affirming care in Medicaid

(b)(5)

From: Lynk, Beth (CMS/OC) <Florence.Lynk@cms.hhs.gov>
Sent: Friday, August 12, 2022 5:29 PM
To: Pryor, Rachel (HHS/OS/IOS) <Rachel.Pryor@hhs.gov>; Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>; Smalley, Elizabeth (HHS/ASPA) <Elizabeth.Smalley@hhs.gov>; Ciccone, Caroline (HHS/ASPA) <Caroline.Ciccone@hhs.gov>
Subject: RE: For Hannah and Beth Review ASAP - Media Inquires: Fox Digital & Los Angeles Blade | Florida decision regarding gender-affirming care in Medicaid

(b)(5)

(b)(5)

Thanks!
Beth

From: Pryor, Rachel (HHS/OS/IOS) <Rachel.Pryor@hhs.gov>
Sent: Friday, August 12, 2022 5:26 PM
To: Lynk, Beth (CMS/OC) <Florence.Lynk@cms.hhs.gov>; Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>; Smalley, Elizabeth (HHS/ASPA) <Elizabeth.Smalley@hhs.gov>; Ciccone, Caroline (HHS/ASPA) <Caroline.Ciccone@hhs.gov>
Subject: Re: For Hannah and Beth Review ASAP - Media Inquires: Fox Digital & Los Angeles Blade | Florida decision regarding gender-affirming care in Medicaid

(b)(5)

Get Outlook for iOS

From: Lynk, Beth (CMS/OC) <Florence.Lynk@cms.hhs.gov>
Sent: Friday, August 12, 2022 5:15:18 PM
To: Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>; Pryor, Rachel (HHS/OS/IOS) <Rachel.Pryor@hhs.gov>; Smalley, Elizabeth (HHS/ASPA) <Elizabeth.Smalley@hhs.gov>; Ciccone, Caroline (HHS/ASPA) <Caroline.Ciccone@hhs.gov>
Subject: FW: For Hannah and Beth Review ASAP - Media Inquires: Fox Digital & Los Angeles Blade | Florida decision regarding gender-affirming care in Medicaid

Hi All – Flagging the below. (b)(5)

Beth

From: Tross, Jason (CMS/OC) <Jason.Tross@cms.hhs.gov>
Sent: Friday, August 12, 2022 5:06 PM
To: Katch, Hannah (CMS/OA) <Hannah.Katch@cms.hhs.gov>; Lynk, Beth (CMS/OC) <Florence.Lynk@cms.hhs.gov>
Cc: Aldana, Karen (CMS/OC) <Karen.Aldana@cms.hhs.gov>; Richardson, Erin (CMS/OA) <Erin.Richardson@cms.hhs.gov>; Trucil, Daniel (CMS/OC) <Daniel.Trucil@cms.hhs.gov>; Chambers, Gwendolyn (CMS/OC) <Gwendolyn.Chambers@cms.hhs.gov>; Schinderle, Elizabeth (CMS/OC) <elizabeth.schinderle@cms.hhs.gov>
Subject: For Hannah and Beth Review ASAP - Media Inquires: Fox Digital & Los Angeles Blade | Florida decision regarding gender-affirming care in Medicaid

Beth and Erin-

(b)(5)

(b)(5)

(b)(5)

Jason Tross
Deputy Director | Media Relations Group
Office of Communications | Centers for Medicare & Medicaid Services
200 Independence Ave. SW, Washington D.C. 20201

Sender: Rainer, Melanie Fontes (OS/IOS) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=9c7242f10a494d45bab72c452ecd9f80-Rainer, Mel
<Melanie.Rainer@hhs.gov>

Recipient: Lynk, Beth (CMS/OC) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=0a669e91bf954cd79ed93895a3c8639d-L7ZE
<Florence.Lynk@cms.hhs.gov>;
Rodriguez, Paul (HHS/OGC) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=755d69b6e04e4aa8981d68258e0aaf7c-Rodriguez,
<PaulR.Rodriguez@hhs.gov>;

(b) (b)(6) (b)(6) (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91 (b)(6)
(b)(6)
Ciccone, Caroline (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=cc80a60f39a84204ad7c4191575500ec-Ciccone, Ca
<Caroline.Ciccone@hhs.gov>;
Pryor, Rachel (HHS/OS/IOS) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=1e87a6df2de041fcb673dd5e40029b87-Pryor, Rach
<Rachel.Pryor@hhs.gov>;
Smalley, Elizabeth (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=546fd81600e14830903adb3af34663f1-Smalley, El
<Elizabeth.Smalley@hhs.gov>;
Bagenstos, Samuel (HHS/OGC) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=afa71ea876614421a32eee5049c60e45-Bagenstos,
<Samuel.Bagenstos@hhs.gov>;
Katch, Hannah (CMS/OA) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=4ac6b74b459a46aaa7e997cb9e74a848-KSDJ
<Hannah.Katch@cms.hhs.gov>;
Jones, Kamara (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=05cef78e341b467099676c353121c1ed-Jones, Kama
<Kamara.Jones@hhs.gov>;
Broido, Tara (HHS/OASH) /o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=2c3cd5c5afe049b6a8b48c25324c7465-Broido, Tar
<Tara.Broido@hhs.gov>

Sent Date: 2022/08/14 16:31:08

Delivered Date: 2022/08/14 16:31:09

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

From:	Langford, Kelly (HHS/ASPA) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FF8AF3DF7FB4BE4BF311B6E040EAE0A-LANGFORD, K <Kelly.Langford@hhs.gov>
To:	Rainer, Melanie Fontes (OS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9c7242f10a494d45bab72c452ecd9f80-Rainer, Mel <Melanie.Rainer@hhs.gov>; Lovenheim, Sarah (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=47f3afc033df47b1aaa46c8e43961db5-Goldfarb, S <Sarah.Lovenheim@hhs.gov>; Greenberg, Mark H (HHS/OGC) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fdb0cbe5760845cc9a98373b9088d7f2-Greenberg, <MarkH.Greenberg@hhs.gov>; Zuniga, Ilse (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=28d4fd8002b140ad9c862e60061f7406-Zuniga, Ils <Ilse.Zuniga@hhs.gov>
CC:	Jones, Kamara (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=05cef78e341b467099676c353121c1ed-Jones, Kama <Kamara.Jones@hhs.gov>; Bagenstos, Samuel (HHS/OGC) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=afa71ea876614421a32eee5049c60e45-Bagenstos, <Samuel.Bagenstos@hhs.gov>
Subject:	Re: ABC: Transgender youth health care ban approved by Florida medical boards
Date:	2022/11/04 19:08:47
Priority:	Normal
Type:	Note

(b)(5)

Get Outlook for iOS

From: Rainer, Melanie Fontes (OS/OCR) <Melanie.Rainer@hhs.gov>

Sent: Friday, November 4, 2022 7:05 PM

To: Lovenheim, Sarah (HHS/ASPA) <Sarah.Lovenheim@hhs.gov>; Langford, Kelly (HHS/ASPA) <Kelly.Langford@hhs.gov>; Greenberg, Mark H (HHS/OGC) <MarkH.Greenberg@hhs.gov>; Zuniga, Ilse (HHS/ASPA) <Ilse.Zuniga@hhs.gov>

Cc: Jones, Kamara (HHS/ASPA) <Kamara.Jones@hhs.gov>; Bagenstos, Samuel (HHS/OGC) <Samuel.Bagenstos@hhs.gov>

Subject: Re: ABC: Transgender youth health care ban approved by Florida medical boards

(b)(5)

Get Outlook for iOS

From: Lovenheim, Sarah (HHS/ASPA) <Sarah.Lovenheim@hhs.gov>

Sent: Friday, November 4, 2022 6:10 PM

To: Langford, Kelly (HHS/ASPA) <Kelly.Langford@hhs.gov>; Greenberg, Mark H (HHS/OGC) <MarkH.Greenberg@hhs.gov>; Zuniga, Ilse (HHS/ASPA) <Ilse.Zuniga@hhs.gov>; Rainer, Melanie Fontes (OS/OCR) <Melanie.Rainer@hhs.gov>

Cc: Jones, Kamara (HHS/ASPA) <Kamara.Jones@hhs.gov>; Bagenstos, Samuel (HHS/OGC) <Samuel.Bagenstos@hhs.gov>

Subject: Re: ABC: Transgender youth health care ban approved by Florida medical boards

(b)(5)

Thanks

From: Langford, Kelly (HHS/ASPA) <Kelly.Langford@hhs.gov>

Sent: Friday, November 4, 2022 6:05 PM

To: Lovenheim, Sarah (HHS/ASPA) <Sarah.Lovenheim@hhs.gov>; Greenberg, Mark H (HHS/OGC) <MarkH.Greenberg@hhs.gov>; Zuniga, Ilse (HHS/ASPA) <Ilse.Zuniga@hhs.gov>; Rainer, Melanie Fontes (OS/OCR) <Melanie.Rainer@hhs.gov>

Cc: Jones, Kamara (HHS/ASPA) <Kamara.Jones@hhs.gov>; Bagenstos, Samuel (HHS/OGC) <Samuel.Bagenstos@hhs.gov>

Subject: RE: ABC: Transgender youth health care ban approved by Florida medical boards

(b)(5)

From: Lovenheim, Sarah (HHS/ASPA) <Sarah.Lovenheim@hhs.gov>

Sent: Friday, November 4, 2022 5:40 PM

To: Greenberg, Mark H (HHS/OGC) <MarkH.Greenberg@hhs.gov>; Langford, Kelly (HHS/ASPA) <Kelly.Langford@hhs.gov>; Zuniga, Ilse (HHS/ASPA) <Ilse.Zuniga@hhs.gov>; Rainer, Melanie Fontes (OS/OCR) <Melanie.Rainer@hhs.gov>

Cc: Jones, Kamara (HHS/ASPA) <Kamara.Jones@hhs.gov>; Bagenstos, Samuel (HHS/OGC) <Samuel.Bagenstos@hhs.gov>

Subject: Re: ABC: Transgender youth health care ban approved by Florida medical boards

+ @Rainer, Melanie Fontes (OS/OCR)

Get Outlook for iOS

From: Greenberg, Mark H (HHS/OGC) <MarkH.Greenberg@hhs.gov>

Sent: Friday, November 4, 2022 5:30:02 PM

To: Langford, Kelly (HHS/ASPA) <Kelly.Langford@hhs.gov>; Zuniga, Ilse (HHS/ASPA) <Ilse.Zuniga@hhs.gov>

Cc: Lovenheim, Sarah (HHS/ASPA) <Sarah.Lovenheim@hhs.gov>; Jones, Kamara (HHS/ASPA) <Kamara.Jones@hhs.gov>; Bagenstos, Samuel (HHS/OGC) <Samuel.Bagenstos@hhs.gov>
Subject: RE: ABC: Transgender youth health care ban approved by Florida medical boards

(b)(5)

Mark Greenberg (he/him)
Deputy General Counsel
Office of the General Counsel
U. S. Department of Health and Human Services
Markh.greenberg@hhs.gov

(b)(6)

From: Langford, Kelly (HHS/ASPA) <Kelly.Langford@hhs.gov>
Sent: Friday, November 4, 2022 5:16 PM
To: Greenberg, Mark H (HHS/OGC) <MarkH.Greenberg@hhs.gov>; Zuniga, Ilse (HHS/ASPA) <Ilse.Zuniga@hhs.gov>
Cc: Lovenheim, Sarah (HHS/ASPA) <Sarah.Lovenheim@hhs.gov>; Jones, Kamara (HHS/ASPA) <Kamara.Jones@hhs.gov>
Subject: RE: ABC: Transgender youth health care ban approved by Florida medical boards

(b)(5)

From: Greenberg, Mark H (HHS/OGC) <MarkH.Greenberg@hhs.gov>
Sent: Friday, November 4, 2022 5:12 PM
To: Langford, Kelly (HHS/ASPA) <Kelly.Langford@hhs.gov>; Zuniga, Ilse (HHS/ASPA) <Ilse.Zuniga@hhs.gov>
Cc: Lovenheim, Sarah (HHS/ASPA) <Sarah.Lovenheim@hhs.gov>; Jones, Kamara (HHS/ASPA) <Kamara.Jones@hhs.gov>
Subject: RE: ABC: Transgender youth health care ban approved by Florida medical boards

(b)(5)

Mark Greenberg (he/him)
Deputy General Counsel
Office of the General Counsel

U. S. Department of Health and Human Services
Markh.greenberg@hhs.gov

(b)(6)

From: Langford, Kelly (HHS/ASPA) <Kelly.Langford@hhs.gov>
Sent: Friday, November 4, 2022 5:08 PM
To: Zuniga, Ilse (HHS/ASPA) <Ilse.Zuniga@hhs.gov>; Greenberg, Mark H (HHS/OGC) <MarkH.Greenberg@hhs.gov>
Cc: Lovenheim, Sarah (HHS/ASPA) <Sarah.Lovenheim@hhs.gov>; Jones, Kamara (HHS/ASPA) <Kamara.Jones@hhs.gov>
Subject: RE: ABC: Transgender youth health care ban approved by Florida medical boards

(b)(5)

Thank you in advance for fielding a Friday night question!!

From: Zuniga, Ilse (HHS/ASPA) <Ilse.Zuniga@hhs.gov>
Sent: Friday, November 4, 2022 5:01 PM
To: Langford, Kelly (HHS/ASPA) <Kelly.Langford@hhs.gov>
Cc: Lovenheim, Sarah (HHS/ASPA) <Sarah.Lovenheim@hhs.gov>; Jones, Kamara (HHS/ASPA) <Kamara.Jones@hhs.gov>
Subject: RE: ABC: Transgender youth health care ban approved by Florida medical boards

(b)(5)

From: Sibori, Gabriela (HHS/ASPA) <Gabriela.Sibori@hhs.gov>
Sent: Friday, November 4, 2022 4:55 PM
To: Clips - Rapid Response <Clips-RapidResponse@ees.hhs.gov>
Subject: ABC: Transgender youth health care ban approved by Florida medical boards

ABC: Transgender youth health care ban approved by Florida medical boards

The decision will be followed by a weekslong approval process.

By [Kiara Alfonseca](#)

November 4, 2022, 4:29 PM

The Florida Board of Medicine and Board of Osteopathic Medicine approved a draft rule Friday to ban medical or surgical gender-affirming care for transgender individuals under 18.

The rule will now go through a weeklong approval process following the board's decision, which includes further public comment.

The decision would prohibit puberty blockers, hormones, cross-hormone therapy and gender-affirming surgery for people under the age of 18.

The boards disagreed on an exception for youth enrolled in Food and Drug Administration Institutional Review Board-approved, university-centered clinical research trials. The Board of Medicine struck the exception from the rule. The Board of Osteopathic Medicine retained the exception.

Members of the board, alongside the board attorney, had not seen this happen before, as the two boards would uphold different standards of care.

This will not impact trans youth who are already receiving these treatments.

The treatments in question are used for those experiencing gender dysphoria -- when a person experiences emotional distress because of the misalignment between their sex at birth and their gender identity. Many national medical institutions, including the American Academy of Pediatrics and the American Public Health Association, say that gender-affirming care is safe and effective. Some, like the American Medical Association, even deem it "medically necessary."

Both sides in the public debate voiced their opinions in front of the medical board committee in the Friday hearing, as well as at a hearing last week.

The room was overwhelmingly in opposition of the rule, with outbursts occurring several times throughout the meeting.

Some attendees spoke about their personal experiences with gender-affirming care and the positive impact it had on their mental health and well-being or that of someone close to them.

Some expressed concerns about gender-affirming care, including hormonal therapy and gender-affirming surgery, and whether it would be irreversible. However, for those who have not yet gone through puberty or are undergoing puberty, the usage of "blockers" are often the first step in medical transition. These are known to be safe, temporary and reversible, according to the AAP.

Some also spoke about their regrets in accessing gender-affirming care.

This is not the first ban of its kind -- it follows similar restrictions in Arkansas and Alabama that prohibit physicians from providing or referring transgender youth for gender-affirming care. However, both are currently blocked due to court rulings.

This is the latest attempt in Florida under Gov. Ron DeSantis' administration to limit access to gender-affirming care for transgender people. As of Aug. 21, Medicaid no longer covers such care for trans people of all ages in the state.

Gabriela Sibori (she/her)
Acting Press Secretary | ASPA
Department of Health and Human Services
(202) 961-8224 | Gabriela.Sibori@hhs.gov

Sender:	Langford, Kelly (HHS/ASPA) /o=EXCHANGELABS/ou=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/cn=RECIPIENTS/cn=7FF8AF3DF7FB4BE4BF311B6E040EAE0A-LANGFORD, K <Kelly.Langford@hhs.gov>
Recipient:	Rainer, Melanie Fontes (OS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9c7242f10a494d45bab72c452ecd9f80-Rainer, Mel <Melanie.Rainer@hhs.gov>; Lovenheim, Sarah (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=47f3afc033df47b1aaa46c8e43961db5-Goldfarb, S <Sarah.Lovenheim@hhs.gov>; Greenberg, Mark H (HHS/OGC) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fdb0cbe5760845cc9a98373b9088d7f2-Greenberg, <MarkH.Greenberg@hhs.gov>; Zuniga, Ilse (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=28d4fd8002b140ad9c862e60061f7406-Zuniga, Ils <Ilse.Zuniga@hhs.gov>; Jones, Kamara (HHS/ASPA) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=05cef78e341b467099676c353121c1ed-Jones, Kama <Kamara.Jones@hhs.gov>; Bagenstos, Samuel (HHS/OGC) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=afa71ea876614421a32eee5049c60e45-Bagenstos, <Samuel.Bagenstos@hhs.gov>
Sent Date:	2022/11/04 19:08:44
Delivered Date:	2022/11/04 19:08:47
Message Flags:	Unread

From:	Schuham, Aaron (HHS/OGC) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C4B426DC641841C0B8FC53BCC4F4B5A2-SCHUHAM, AA <Aaron.Schuham@hhs.gov>
To:	Allen, Marc (HHS/OGC) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cc610a88e103410889da97b4a20e69b8-Allen, Marc <Marc.Allen@hhs.gov>; Rainer, Melanie Fontes (OS/IOS) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9c7242f10a494d45bab72c452ecd9f80-Rainer, Mel <Melanie.Rainer@hhs.gov>; Rodriguez, Paul (HHS/OGC) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=755d69b6e04e4aa8981d68258e0aaf7c-Rodriguez, <PaulR.Rodriguez@hhs.gov>
CC:	Wiggins, Audrey (HHS/OGC) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ba0233584cf046d892c27f25674ff982-Wiggins, Au <Audrey.Wiggins@hhs.gov>
Subject:	Re: Some important feedback from our convo with CIV on TX enforcement matters -- One of us will try to send a debrief email shortly.
Date:	2022/03/17 15:03:17
Priority:	Normal
Type:	Note

Please call if you can. Important things are getting lost in the email.

Get Outlook for iOS

From: Allen, Marc (HHS/OGC) <Marc.Allen@hhs.gov>

Sent: Thursday, March 17, 2022 3:01:21 PM

To: Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>; Schuham, Aaron (HHS/OGC) <Aaron.Schuham@hhs.gov>; Rodriguez, Paul (HHS/OGC) <PaulR.Rodriguez@hhs.gov>

Cc: Wiggins, Audrey (HHS/OGC) <Audrey.Wiggins@hhs.gov>

Subject: RE: Some important feedback from our convo with CIV on TX enforcement matters -- One of us will try to send a debrief email shortly.

(b)(5)

From: Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>

Sent: Thursday, March 17, 2022 3:00 PM

To: Allen, Marc (HHS/OGC) <Marc.Allen@hhs.gov>; Schuham, Aaron (HHS/OGC) <Aaron.Schuham@hhs.gov>; Rodriguez, Paul (HHS/OGC) <PaulR.Rodriguez@hhs.gov>

Cc: Wiggins, Audrey (HHS/OGC) <Audrey.Wiggins@hhs.gov>

Subject: RE: Some important feedback from our convo with CIV on TX enforcement matters -- One of us will try to send a debrief email shortly.

(b)(5)

Melanie Fontes Rainer (she/her/ella)
Counselor to the Secretary
U.S. Department of Health and Human Services
Cell: (b)(6)
Melanie.Rainer@hhs.gov

From: Allen, Marc (HHS/OGC) <Marc.Allen@hhs.gov>
Sent: Thursday, March 17, 2022 2:49 PM
To: Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>; Schuham, Aaron (HHS/OGC) <Aaron.Schuham@hhs.gov>; Rodriguez, Paul (HHS/OGC) <PaulR.Rodriguez@hhs.gov>
Cc: Wiggins, Audrey (HHS/OGC) <Audrey.Wiggins@hhs.gov>
Subject: RE: Some important feedback from our convo with CIV on TX enforcement matters -- One of us will try to send a debrief email shortly.

(b)(5)

Marc

From: Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>
Sent: Thursday, March 17, 2022 2:47 PM
To: Allen, Marc (HHS/OGC) <Marc.Allen@hhs.gov>; Schuham, Aaron (HHS/OGC) <Aaron.Schuham@hhs.gov>; Rodriguez, Paul (HHS/OGC) <PaulR.Rodriguez@hhs.gov>
Cc: Wiggins, Audrey (HHS/OGC) <Audrey.Wiggins@hhs.gov>
Subject: RE: Some important feedback from our convo with CIV on TX enforcement matters -- One of us will try to send a debrief email shortly.

(b)(5)

Melanie Fontes Rainer (she/her/ella)
Counselor to the Secretary
U.S. Department of Health and Human Services
Cell: (b)(6)
Melanie.Rainer@hhs.gov

From: Allen, Marc (HHS/OGC) <Marc.Allen@hhs.gov>

Sent: Thursday, March 17, 2022 2:45 PM

To: Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>; Schuham, Aaron (HHS/OGC) <Aaron.Schuham@hhs.gov>; Rodriguez, Paul (HHS/OGC) <PaulR.Rodriguez@hhs.gov>

Cc: Wiggins, Audrey (HHS/OGC) <Audrey.Wiggins@hhs.gov>

Subject: RE: Some important feedback from our convo with CIV on TX enforcement matters -- One of us will try to send a debrief email shortly.

(b)(5)



From: Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>

Sent: Thursday, March 17, 2022 2:36 PM

To: Schuham, Aaron (HHS/OGC) <Aaron.Schuham@hhs.gov>; Rodriguez, Paul (HHS/OGC) <PaulR.Rodriguez@hhs.gov>

Cc: Wiggins, Audrey (HHS/OGC) <Audrey.Wiggins@hhs.gov>; Allen, Marc (HHS/OGC) <Marc.Allen@hhs.gov>

Subject: RE: Some important feedback from our convo with CIV on TX enforcement matters -- One of us will try to send a debrief email shortly.

Someone can also call me, I am free for 10 min until 245

Melanie Fontes Rainer (she/her/ella)
Counselor to the Secretary
U.S. Department of Health and Human Services
Cell: (b)(6)
Melanie.Rainer@hhs.gov

From: Schuham, Aaron (HHS/OGC) <Aaron.Schuham@hhs.gov>

Sent: Thursday, March 17, 2022 2:35 PM

To: Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>; Rodriguez, Paul (HHS/OGC)

<PaulR.Rodriguez@hhs.gov>

Cc: Wiggins, Audrey (HHS/OGC) <Audrey.Wiggins@hhs.gov>; Allen, Marc (HHS/OGC)

<Marc.Allen@hhs.gov>

Subject: Some important feedback from our convo with CIV on TX enforcement matters -- One of us will try to send a debrief email shortly.

Aaron D. Schuham
Associate General Counsel
Civil Rights Division
HHS/Office of the General Counsel

(b)(6) (c)

Sender:	Schuham, Aaron (HHS/OGC) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C4B426DC641841C0B8FC53BCC4F4B5A2-SCHUHAM, AA <Aaron.Schuham@hhs.gov>
Recipient:	Allen, Marc (HHS/OGC) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cc610a88e103410889da97b4a20e69b8-Allen, Marc <Marc.Allen@hhs.gov>; Rainer, Melanie Fontes (OS/IOS) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9c7242f10a494d45bab72c452ecd9f80-Rainer, Mel <Melanie.Rainer@hhs.gov>; Rodriguez, Paul (HHS/OGC) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=755d69b6e04e4aa8981d68258e0aaf7c-Rodriguez, <PaulR.Rodriguez@hhs.gov>; Wiggins, Audrey (HHS/OGC) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ba0233584cf046d892c27f25674ff982-Wiggins, Au <Audrey.Wiggins@hhs.gov>
Sent Date:	2022/03/17 15:03:14
Delivered Date:	2022/03/17 15:03:17

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information Act