From: Kumar, Vatsala (HHS/OCR) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FC510606A9034939AC2EB2C237DD8CF3-KUMAR, VATS <Vatsala.Kumar@hhs.gov>
To: de Kervor, Dylan (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91-Dekervor, D <Dylan.deKervor@hhs.gov>
Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care
Date: 2022/07/22 14:58:49
Priority: Normal
Type: Note

Hi Dylan,

Please find attached a memo about the Florida proposed rule. While the document is pretty long, note that the memo itself is only the first six pages, and the rest is a rundown of the public hearing that was held.

This focuses primarily on public and written comments I was able to find and some of the major issues that have come up therein, but I'm keeping an eye on the news to see if there are any other developments.
Please let me know if I can do any follow-up on this today or next week!

Have a great weekend!

Best,
Vatsala

From: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Sent: Wednesday, July 20, 2022 11:15 AM
To: Kumar, Vatsala (HHS/OCR) <Vatsala.Kumar@hhs.gov>
Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Yup!

Dylan Nicole de Kervor, Esq., MSW (she/her)
Phone: (b)(6)
Email: dylan.dekervor@hhs.gov

From: Kumar, Vatsala (HHS/OCR) <Vatsala.Kumar@hhs.gov>
Sent: Wednesday, July 20, 2022 11:14 AM
To: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Hi Dylan,

Yes! Can do. Is Friday an okay timeline for this?

Best,
Vatsala

From: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Sent: Wednesday, July 20, 2022 11:12 AM
To: Kumar, Vatsala (HHS/OCR) <Vatsala.Kumar@hhs.gov>
Subject: FW: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Hi Vatsala,

We are meeting with CMS to discuss the below FL proposed rule next week; are you able to do some research to find out the latest? Maybe there is a transcript or recording of the public hearing as well?

If you can draft up the information as a briefing memo for the Director, that would be great. I have attached a sample for format of the header, and for the body you can include the headers of Background, Current Status, and maybe next steps? Also if there is any information about organizations working in FL on the issue that would be good to know.

Once we have a time, I'll send you the invite.

Thank you!
Dylan

From: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Sent: Tuesday, June 21, 2022 9:32 AM
To: Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>; Jee, Lauren (HHS/OCR) <Lauren.Jee1@hhs.gov>; Katch, Hannah (CMS/OA) <Hannah.Katch@cms.hhs.gov>
Cc: Barron, Pamela (HHS/OCR) <Pamela.Barron@hhs.gov>
Subject: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Good morning all,

I am sure you have all seen the news, but I am flagging the State of Florida's proposed rule 59G-1.050, published in the Florida Administrative Record on Friday (6/17/2022), to prohibit Florida Medicaid coverage of the below services "for 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. Proposed 59G-1.050(7)(a). The proposed rule futher states that 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. Proposed 59G-1.050(7)(b). I have attached the notice here for ease of reference.

There is a public hearing scheduled for July 8, 2022 from 3:00 – 5:00 p.m. in Tallahassee, FL.

I'm not sure if calls are already happening on this, but since they implicate both CMS and OCR equities it seems like coordination would be beneficial.

Best,
Dylan

Dylan Nicole de Kervor, Esq., MSW (she/her) | Section Chief
Office for Civil Rights
U.S. Department of Health &Human Services
200 Independence Ave. S.W., Room 532E
Washington, D.C. 20201
Phone: (b)(6)
Email: dylan.dekervor@hhs.gov

Please note I will be out of the office with no email access July 4 – 18, 2022.

Sender: Kumar, Vatsala (HHS/OCR) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FC510606A9034939AC2EB2C237DD8CF3-KUMAR, VATS <Vatsala.Kumar@hhs.gov>

Recipient: de Kervor, Dylan (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91-Dekervor, D <Dylan.deKervor@hhs.gov>

Sent Date: 2022/07/22 14:58:17

Delivered Date: 2022/07/22 14:58:49

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

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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 universities[1] 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* Meredithe 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* Meredithe 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

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.*

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 lead 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

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[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.

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

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."

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

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 idealogues 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

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 sel[f] 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.

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

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."

A pastor from Florida spoke next on behalf of Protect Our Children Project, Duval Country 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." Sbe 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 bave a hysterectomy," which for teens could mean a potential hysterectomy before the age of twenty. She said tbat "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 witb 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.

"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

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).

From: Kumar, Vatsala (HHS/OCR) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FC510606A9034939AC2EB2C237DD8CF3-KUMAR, VATS <Vatsala.Kumar@hhs.gov>
To: de Kervor, Dylan (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91-Dekervor, D <Dylan.deKervor@hhs.gov>
Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care
Date: 2022/08/10 15:24:55
Priority: Normal
Type: Note

Hi Dylan,

I'd requested a transcript of the hearing on the Florida rule back when I first started drafting the memo, and I just finally received that. There shouldn't be much in here that isn't in my original appendix, but I'm attaching it anyway in case it's useful for us or CMS.

See you soon!

Vatsala

From: Kumar, Vatsala (HHS/OCR)
Sent: Friday, August 5, 2022 12:44 PM
To: de Kervor, Dylan (HHS/OCR) <Dylan.Dekervor@hhs.gov>
Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Hi Dylan,

Sorry for the delay on getting this back to you! As you'll see, I ended up going a little past just the article and including some other critiques about authors/works that were cited in the report. I also want to flag that many of these authors/works were cited in the comments to the 2019 NPRM that I reviewed earlier this summer.

Please let me know if I can do anything further on this! It's definitely not comprehensive (I didn't go through everything they cited), but focuses just on some of the bigger/more obvious issues. I'm happy to do a deeper dive if that would be useful.

Have a good weekend!

Best,
Vatsala

From: Kumar, Vatsala (HHS/OCR)
Sent: Wednesday, August 3, 2022 3:01 PM
To: de Kervor, Dylan (HHS/OCR) <Dylan.Dekervor@hhs.gov>
Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Yes, can do! I'll get you this (and the updated Medicaid denials memo) tomorrow by EOD.
Have a safe flight!

Best,
Vatsala

From: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Sent: Wednesday, August 3, 2022 3:00 PM
To: Kumar, Vatsala (HHS/OCR) <Vatsala.Kumar@hhs.gov>
Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Thank you! I sent this to myself to read also!

(b)(5)

Dylan Nicole de Kervor, Esq., MSW (she/her)
Phone: (b)(6)
Email: dylan.dekervor@hhs.gov

From: Kumar, Vatsala (HHS/OCR) <Vatsala.Kumar@hhs.gov>
Sent: Wednesday, August 3, 2022 2:58 PM
To: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Hi Dylan,

Vice published this article today where 10 authors of studies cited in the Florida Medicaid Report said that their work was distorted, misrepresented, etc.

(b)(5)

Thanks!

Best,
Vatsala

From: Kumar, Vatsala (HHS/OCR)
Sent: Monday, August 1, 2022 4:33 PM
To: de Kervor, Dylan (HHS/OCR) <Dylan.Dekervor@hhs.gov>
Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Updated version attached; I also made the tweak that Lauren had in track changes.

The info on the Florida Board of Medicine rule is on page 3, at the top of the "Current Status" section. Happy to move it elsewhere if you'd prefer!

Best,
Vatsala

From: Kumar, Vatsala (HHS/OCR)
Sent: Monday, August 1, 2022 3:39 PM
To: de Kervor, Dylan (HHS/OCR) <Dylan.Dekervor@hhs.gov>
Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

No worries! Florida is doing a lot of things these days so I get it!
Yes, can do; I'll send it back your way shortly.

Best,
Vatsala

From: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Sent: Monday, August 1, 2022 3:36 PM
To: Kumar, Vatsala (HHS/OCR) <Vatsala.Kumar@hhs.gov>
Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Hi Vatsala,

Sorry about the snafu on Friday – apparently CMS thought we were talking about an immigration status EO that Florida issued last year!

Would you mind updating your memo to also mention the below:

> FL medical board to weigh blocking treatments for transgender youth
> *CBS News Miami, 08/01/2022*
> The FL Board of Medicine posted 1,113 documents related to gender-dysphoria treatment in preparation for their meeting The state Department of Health filed a petition asking the board, which regulates medical doctors, to start a rulemaking process on the proposal by Gov. Ron DeSantis' administration to bar physicians from providing treatments such as hormone therapy and puberty-blocking medication to transgender youths.

Thank you!
Dylan

Dylan Nicole de Kervor, Esq., MSW (she/her)
Phone: (b)(6)
Email: dylan.dekervor@hhs.gov

From: Kumar, Vatsala (HHS/OCR) <Vatsala.Kumar@hhs.gov>
Sent: Friday, July 22, 2022 2:58 PM
To: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Hi Dylan,

Please find attached a memo about the Florida proposed rule. While the document is pretty long, note that the memo itself is only the first six pages, and the rest is a rundown of the public hearing that was held.

This focuses primarily on public and written comments I was able to find and some of the major issues that have come up therein, but I'm keeping an eye on the news to see if there are any other developments.
Please let me know if I can do any follow-up on this today or next week!

Have a great weekend!

Best,
Vatsala

From: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Sent: Wednesday, July 20, 2022 11:15 AM
To: Kumar, Vatsala (HHS/OCR) <Vatsala.Kumar@hhs.gov>
Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Yup!

Dylan Nicole de Kervor, Esq., MSW (she/her)
Phone (b)(6)
Email: dylan.dekervor@hhs.gov

From: Kumar, Vatsala (HHS/OCR) <Vatsala.Kumar@hhs.gov>
Sent: Wednesday, July 20, 2022 11:14 AM
To: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Hi Dylan,

Yes! Can do. Is Friday an okay timeline for this?

Best,
Vatsala

From: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Sent: Wednesday, July 20, 2022 11:12 AM

To: Kumar, Vatsala (HHS/OCR) <Vatsala.Kumar@hhs.gov>
Subject: FW: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Hi Vatsala,

We are meeting with CMS to discuss the below FL proposed rule next week; are you able to do some research to find out the latest? Maybe there is a transcript or recording of the public hearing as well?

If you can draft up the information as a briefing memo for the Director, that would be great. I have attached a sample for format of the header, and for the body you can include the headers of Background, Current Status, and maybe next steps? Also if there is any information about organizations working in FL on the issue that would be good to know.

Once we have a time, I'll send you the invite.

Thank you!
Dylan

From: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Sent: Tuesday, June 21, 2022 9:32 AM
To: Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>; Jee, Lauren (HHS/OCR) <Lauren.Jee1@hhs.gov>; Katch, Hannah (CMS/OA) <Hannah.Katch@cms.hhs.gov>
Cc: Barron, Pamela (HHS/OCR) <Pamela.Barron@hhs.gov>
Subject: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Good morning all,

I am sure you have all seen the news, but I am flagging the State of Florida's proposed rule 59G-1.050, published in the Florida Administrative Record on Friday (6/17/2022), to prohibit Florida Medicaid coverage of the below services "for 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. Proposed 59G-1.050(7)(a). The proposed rule futher states that 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. Proposed 59G-1.050(7)(b). I have attached the notice here for ease of reference.

There is a public hearing scheduled for July 8, 2022 from 3:00 – 5:00 p.m. in Tallahassee, FL.

I'm not sure if calls are already happening on this, but since they implicate both CMS and OCR equities it seems like coordination would be beneficial.

Best,
Dylan

Dylan Nicole de Kervor, Esq., MSW (she/her) | Section Chief
Office for Civil Rights
U.S. Department of Health &Human Services

200 Independence Ave. S.W., Room 532E
Washington, D.C. 20201
Phone: (b)(6)
Email: dylan.dekervor@hhs.gov

Please note I will be out of the office with no email access July 4 – 18, 2022.

Sender:	Kumar, Vatsala (HHS/OCR) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FC510606A9034939AC2EB2C237DD8CF3-KUMAR, VATS <Vatsala.Kumar@hhs.gov>
Recipient:	de Kervor, Dylan (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91-Dekervor, D <Dylan.deKervor@hhs.gov>
Sent Date:	2022/08/10 15:24:50
Delivered Date:	2022/08/10 15:24:55

TAPED PROCEEDINGS
IN RE: PROPOSED RULE 59G-1.050
HELD ON JULY 8, 2022

Transcribed by:

CLARA C. ROTRUCK

Court Reporter

TAPED PROCEEDINGS

MS. COLE: My name is Chloe Cole, and I am a 17-year-old detransitioner from the Central Valley of California. I was medically transitioned from ages 13 to 16. My parents took me to a therapist to affirm my male identity. The therapist did not care about causality or encourage me to learn to be comfortable in my body because of -- partially due to California's conversion therapy bans. He brushed off my parents' concerns about that because he had hormones, puberty blockers, and surgeries. My parents were given a suicide threat as a reason to move me forward in my transition.

My endocrinologist, after two or three appointments, put me on puberty blockers and injectable testosterone. At age 15, I asked to remove my breasts.

My therapist continued to affirm my transition. I went to a top surgery class that was filled with around 12 girls that thought they were men -- I thought that they were men. Most were my age or younger. None of us were going to be men. We were just fleeing from the uncomfortable feeling of becoming women.

I was unknowingly physically cutting off my

true self from my body, irreversibly and painfully. Our transidentities were not questioned.

I went through with the surgery. Despite having therapists and attending the top surgery class, I really didn't understand all of the ramifications of any of the medical decisions I was making. I wasn't capable of understanding it, and it was downplayed consistently.

My parents, on the other hand, were pressured to continue my so-called gender journey with the suicide threat.

I have been forced to realize that I will never be able to breastfeed a child, despite my increasing desire to as I mature. I have blood clots in my urine. I am unable to fully empty my bladder. I do not yet know if I am capable of carrying a child to full term. In fact, even the doctors who put me on puberty blockers and testosterone do not know.

No child should have to experience what I have. My consent was not informed and I was filled by (inaudible).

A VOICE: Thank you for your comment.

(Applause.)

A VOICE: The next speaker will be Sophia

Galvin.

MS. GALVIN: My name is Sophia Galvin. I am a detransitioner. I began detransitioning at 17 and a half socially. At 18 was when I began detrans- -- I mean transitioning medically.

I had a history of mental illness. I had suicidal ideation and I would self-harm. And my wanting to transition was all in an effort to escape the fear of being a woman in this society and because of traumas that I had been through in my life.

So I continued down the process, and then I ended up removing my breasts at 19 years old because I was trapped, afraid to go back to my original ideo- -- to my original sex, and basically look crazy to the people around me.

When I detransitioned -- after I detransitioned, it was very difficult because I didn't have any support. The doctor basically just told me to stop the hormones. I didn't have anyone to speak to about it, I didn't go to a mental health counselor, and I didn't prepare anything. I just really want to say that this is not good for children. I was harmed by this, and it should not be covered under Medicaid.

A VOICE: Thank you for your comments.

(Applause.)

A VOICE: The next speaker is Katie Caterbury.

MS. CATERBURY: At the age of 14, my once healthy and happy daughter was convinced by the Gay-Straight Alliance at school that she was my son. At the age of 16, a physician injected her with testosterone without my consent and without my knowledge. At the age of 17, Medicaid paid surgeons to perform a double mastectomy and a hysterectomy as an outpatient. At age 19, Medicaid paid for her to undergo a phalloplasty.

She had and still has private insurance that was bypassed. I fought against what happened to my daughter every step of the way, but to no avail.

How can any rational adult, much less a physician, not know that it is impossible to change one's biological sex? Why are there doctors convincing trusting parents to affirm the lie that biological sex is changeable? They prescribe irreversible puberty-blocking drugs and powerful wrong-sex hormones and amputate healthy breasts and remove reproductive organs from children against the protests of their parents.

Affirming the false notion to a child that it

is possible to change one's sex is child abuse. Administering powerful hormones that cause irreversible changes to their bodies and their brains is child abuse. Amputating the healthy body parts of a child whose brain has not reached full decision-making maturity is simply criminal.

Why are these doctors not criminally charged? Why is this being funded with taxpayer dollars? This must be stopped.

Three years ago, I traveled to Washington, DC -- Washington, DC, to speak to federal lawmakers. I begged their staff to do something. Democrats and Republicans, no one seemed to care. But I will not give up trying until this medical experiment on children is over.

To every single person fighting for the health and lives of our children, I am profoundly grateful. Thank you.

(Applause.)

A VOICE: Just so we get through all the speakers, we'd ask that you hold your applause until the end of the program.

Next speaker will be Jeanette Cooper.

MS. COOPER: My name is Jeanette Cooper, and I am here on behalf of Partners for Ethical Care, a

nonpartisan, nonprofit organization that has no paid staff.

No therapy is better than bad therapy, and children are suffering because parents cannot find professionals to serve the psychological needs of their families and children, and they are being met with a medical treatment for a psychological condition. We need to make space in the public sphere for ethical therapists by removing the medical treatment option.

Nearly every therapist who publicly speaks is a cheerleader for gender identity affirmation, gluing that poisoned bandage on the skin of children, causing permanent psychological and physical harm by solidifying an idea that maybe you were born in the wrong body.

We are here to state the obvious. No child can or ever will be born in the wrong body. Everyone knows what a woman is, but some people are afraid to say it. We are not afraid.

Our organization was founded by a handful of mothers who realized that no one was coming to protect these children. We could not wait any longer for help to arrive.

Families are desperate to find actual support.

They do not want a poisoned bandage that cosmetically covers a wound that grows deeper when covered and left untreated. Affirmation is a poisoned bandage that does not help to heal, but hides a deep need that will not be helped by injections and surgeries.

The state has no business using taxpayer funding to turn children into permanent medical patients. The state has no business assisting doctors in selling disabilities to vulnerable, suffering children by prescribing puberty blockers, cross-sex hormones, and extreme cosmetic body modification. These so-called treatments are not real health care.

The state should, however, fund legitimate and proven care. For many children, a transidentity is a crutch. It is a placeholder that stands in for real suffering that hasn't been named. If they can find a pediatrician, family therapist, or other professionals who will address their actual needs, children discard their transidentity and move forward with self-actualization, rather than staying in a state of stunted psychological and physical growth, surviving with superficial, short-term validation like a street drug that needs

to be injected every day. Our job is to protect children, and we have to step in because the medical field is failing these families.

Thank you for stepping in now before it costs the State of Florida much more than dollars. Thank you for this proposed rule. We support you.

(Applause.)

A VOICE: Thank you for your comments.

Next speaker, Donna Lambart.

MS. LAMBART: Hello. My name is Donna Lambart. I am here on behalf of concerned parents to speak in support of the rule to stop allowing Medicaid to pay medical transition of children in Florida.

Today I appeal to you on behalf of over 2,600 parents in our group. As parents, we know our kids. As people, we know right from wrong. But the health care professionals are presenting many of us with a false and painful choice: Accept what we know will permanently harm our children or lose them to suicide. These false ideas are being stated in the presence of children. This is not only cruel, it's simply not true. There is no data to prove that medically transitioning minors prevents suicide.

Society, the Internet, media, schools, and government convince kids that their parents que- -- if their parents question -- if their parents question their identity, it is because their parents hate them. Parents who are unwilling to drop all rational thinking and surrender to the affirmation-only model of care pay a social, emotional, and custodial price no parent should ever have to pay.

Parents lose their children every day to people who help them transition, leading them down a dangerous medical path that permanently -- permanently harming their healthy bodies with off-label drugs and experimental surgeries.

I interact with parents on a -- every day whose children are instantly derailed as a result of adopting a transgender identity. These children become angry and hostile and resentful. They begin lashing out at anyone who will not agree with their new-found identity. Parents are left -- have been forced to rely on each other to figure out how best to navigate this destructive social phenomenon.

The current one-size-fits-all affirmation model cuts parents out of the equation, charging forward with a rigid, transition-only course of

action.

A VOICE: Ma'am, excuse me, your time is up. Could you please wrap it up?

MS. LAMBART: Yes.

I would just like to say that on behalf of thousands of loving parents, we ask Florida -- the health -- to stand up for the protection of children and teens who are under -- who are being offered a magic fix. Parents deserve support and children deserve sound care.

Thank you for your support and your time.

(Applause.)

A VOICE: Thank you for your comments.

The next speaker is Gerald Buston.

MR. BUSTON: Ladies and gentlemen, I am here as a Christian pastor. 71 years ago, I gave my life to Jesus Christ and chose to live my life according to the Word of God, the Bible. The Bible teaches that God makes people male and female, and it says that repeatedly. Jesus said that himself. And for us to try to transition people away from what God did should be -- well, it definitely is a sin, but it should be a criminal abuse of children, especially when they're not at the age where they can properly process what they're doing to

themselves or allowing to be done to themselves.

I urge Medicaid don't support this. I urge the State of Florida to pass laws against it and not allow our children to be abused the way they are being abused by people that have one goal in mind, and that is depopulating the world by cutting back on the birth rate and by cutting back on the population we have in our world right now.

So I support the bill that we do not pay for this kind of stuff, and I would say let's go further and pass laws against it and make that extreme child abuse to do that to children that don't have the right to know.

(Applause.)

A VOICE: The next speaker is -- I believe it's Brady or perhaps Brandy Andrews.

MS. ANDREWS: Hey there, Brandy Andrews. I'm here to speak in support of banning Medicaid funding for transgender surgeries and treatments.

Transgender surgeries, puberty blockers, and cross-sex hormone treatments have been shown to be extremely harmful, especially to minors, causing sterility and irreversible physical and psychological damage.

Physically healthy, gender-confused girls are

being given double mastectomies at 13 and hysterectomies at 16, while males are referred for surgical castration and penectomies at 16 and 17, respectively.

How have we reached this point in life where we're allowing this at such a young age, but yet you have to be 16 to drive a car, 18 to buy a pack of cigarettes, where we're allowing children to change their genders before they've even reached puberty or shortly after?

Pharmaceutical companies are unethically enriching themselves off the destruction of countless young lives that are being fed puberty blockers, which these companies are advertising children. It's just straight-up child abuse, and it's preying on our society's most vulnerable youth.

Let kids be kids. I am asking Medicaid to stop funding experimental medical treatments on minors. Thank you.

(Applause.)

A VOICE: If I could remind folks to please state your name before you start your comments.

Next speaker is Sabrina Hartsfield.

MS. HARTSFIELD: Good afternoon. My name is

Sabrina Hartsfield, and I am speaking just from my own opinions. I am an alumni of Florida State University and I am a born-again Christian.

Because of this conviction, I believe we as human beings have an obligation to ensure poor and marginalized people of all ages have adequate medical care through the Medicaid program.

Without gender-affirming health care, transgender and gender nonconforming individuals will die. According to every major legitimate medical organization, gender affirming care is the treatment for gender dysphoria.

I am here today to speak against Rule 59G-1.050, the Florida Medicaid trans and medical care ban, from being put into place.

Gender-affirming care is medically necessary and life-saving treatment that should be decided between a patient, their caregivers, and a health care professional, not big government.

Florida is about freedom from big government overreach. Medicaid should cover all medically-necessary treatment, and under the right to privacy found in Florida's constitution, this is, again, a decision that should be hands -- in the hands of the patient and their health care

providers.

This rule also violates the nondiscrimination protections for people of all gender identities found in the Affordable Care Act and the Medicaid Act.

Transgender and gender nonconforming people who have gender dysphoria are already at increased risk for negative health outcomes, such as being diagnosed with anxiety or depression, battling a substance use disorder, and attempting suicide. Denying medical care that has been determined to be the best practice by every major medical association from the American Psychological Association to the American Medical Association to the Endocrine Society will be life-threatening. Denying transgender and gender nonconforming people medical care can lead to depression, self-harming, social rejection, and suicidal behavior.

If the trans medical care ban is enacted, it will be putting the lives of over 9,000 transgender Floridians in danger.

Please block proposed Rule 59G-1.050.

(Applause.)

A VOICE: The next speaker is Simone Chris.

MS. CHRIS: Good afternoon. My name is Simone

Chris and I'm an attorney. I'm the director of the Transgender Rights Initiative Southern Legal Council. We are a statewide, not-for-profit, public interest civil rights law firm that utilizes federal impact litigation policy reform and individual advocacy to ensure communities that we serve have access to justice and freedom from discrimination.

We vehemently oppose the proposed rule based both on the science and evidence supporting the medical necessity of treatment for gender dysphoria and our own extensive experience working with hundreds of transgender adults and minors and witnessing the tremendous benefits that access to such care provides.

In effect, the proposed rule creates a blanket exclusion for coverage of medically-necessary health care for one of the most vulnerable populations in our state, eliminating the right of all transgender Floridians with Medicaid to even have their health care needs subjected to a medical-necessity analysis. The insidiousness of this rule is exacerbated by the fact that it places in its cross-hairs the individuals in our state who are already disproportionately likely to experience

poverty, homelessness, unemployment, poor mental and physical health outcomes, and to have the least access to resources in health care as it is.

We urge AHCA to reject these proposed changes to the rule excluding the coverage for all medically-necessary gender-affirming care because it directly contravenes the widely accepted, authoritative standards of care and the consensus of every major medical association in our country. It will cause significant harm to the individuals that we serve by depriving them of critical, life-saving medical care. It interferes with and substitutes the state's judgment in place of the doctor/patient relationship, the rights of the individual, and the fundamental rights of a parent to determine appropriate medical treatment for their own child, and it is a shameful waste of state resources.

Similar exclusions have been enjoined or struck down by courts across the country as inconsistent with the rights guarantee to Medicaid recipients under the Medicaid Act, under the equal protection clause of the 14th Amendment, the Affordable Care Act. And this litigation that the state will certainly find itself embroiled in is

wasting valuable state resources that could be better utilized enhancing the lives of Floridians rather than attacking them.

Thank you.

(Applause.)

A VOICE: Matthew Benson.

DR. BENSON: My name is Matthew Benson. I'm a board-certified pediatrician and pediatric endocrinologist in the state, and I agree with this rule. I think the data on which the gender affirmative model is based is not scientific.

The National Board of Health and Welfare of Sweden has recently enacted in that country pretty significant restrictions. And if we're going to do this type of care, it needs to be under an IRB-approved protocol and it needs to be based on the best data.

I'm used to prescribing these medications in the sense of puberty blockers. And one of the largest studies that came from Sweden was published around 2016, and basically what they showed is that in those individuals who are transgender and receive these types of procedures, the rates of overall mortality compared to the general population was three times that of the general

population; completed suicide, 19 times that of the general population; five times suicide attempts of the general population. Similarly, in Denmark, out of a 20-year period, by the time a similar study was done, 10 percent of the population had died.

We need better data. We need long-term perspective trials where we can look at adverse effects. We need much more robust data to justify these kinds of very aggressive therapies. And we've already seen two individuals, Chloe and Sophia, testify here today about how they were harmed by these procedures.

Thank you for your time.

(Applause.)

A VOICE: Next speaker, Karen Shoen.

MS. SHOEN: My name is Karen Shoen. I'm with the Florida Citizens Alliance and I'm a former teacher.

I would like to know why .03 percent of the population is dictating to 99.97 percent of the population to accept and pay for an elective surgery. Kids change their minds. I can tell you as a teacher, one day they want to be a fireman, the next day they want to be an engineer, and then they go into being something else.

The problem is we are not explaining the wonders of what it is to be comfortable in your body with both our parents and in our biology and hygiene glasses. So kids become fearful. It's our job to take that fear away as a teacher, not to force them into something else.

The children may be afraid of maturing, they may be afraid of a lot of things, but we're not looking for the root cause, we are now suggesting and implanting in their brains that they're not comfortable in their body.

I'd like to leave you with this thought: Can I drive a car? No, you're 13. Can I have a drink? No, you're 13. Can I shoot a gun? No, you're 13. Can I change my gender? Yes, you're in charge. How is that possible?

(Applause.)

A VOICE: Next speaker, Bill Snyder.

MR. SNYDER: Thank you. Bill Snyder. I (inaudible) Monticello.

I want to talk about a disease that has infected society today called reality disease. Charlie had reality disease. He woke up one morning and wouldn't get out of bed and go to work. His wife said, "Charlie, you've got to get up,

you've got to go to work." He said, "I can't, I'm dead." His wife said, "You're not dead, you're talking to me. I can see you breathing." Charlie says, "I can't get up and go to work, I'm dead." The wife called in a psychologist. Psychologist gave Charlie a lengthy interview. At the end of the interview, the psychologist said, "Charlie, come on, we're going to go downtown." They went downtown to the morgue. The psychologist opened a locker, (inaudible) out a cadaver on a tray, pulled the sheet back over the feet of the cadaver, said, "Charlie, dead people's hearts don't beat, they don't have circulation, they do not bleed." He took the toe of the cadaver, stuck a pin in it. No blood came out. The psychologist said, "See, Charlie, dead people don't bleed. Now, give me your thumb." Took Charlie's thumb, stuck a pin in it, out came bright, red blood. The psychologist said, "See, Charlie, you're not dead. That's blood." Charlie said, "What do you know? Dead people do bleed."

The further we live from reality, the further we move from morality, the further we move from virtue, the more secular we become. The more secular we become, the less freedom we have.

Please approve this proposed rule change. Thank you.

(Applause.)

A VOICE: Next speaker, Ingrid Ford.

MS. FORD: Yes. Good afternoon. I'm Ingrid Ford. Thank you for the opportunity. I'm with Christian Family Coalition. I've been a college counselor 15 years, and I'm here in support -- I'm to speak in support of Rule 59G-1.050 to ban Medicaid funding from transgender surgeries and treatments.

This rule will protect Florida residents, especially minors, from harmful transgender surgeries, harmful blockers, and other unnatural therapies being promoted by radical gender ideals and with no basis in science.

This rule also will protect taxpayers from being forced to subsidize these highly unethical and dangerous procedures, which can cost upwards of $300,000.

Thank you.

(Applause.)

A VOICE: Next speaker, Richard Carlins.

MR. CARLINS: Hello, my name is Richard Carlins and I am in support of the rule and I'm

just going to speak from the heart a little bit. I feel like I'm walking in a house of mirrors or something or it's just -- it's surreal, the world that I live in today from the world that I grew up in.

I had a traditional family, a mother and father. We're saying the Pledge of Allegiance in schools and having prayer in schools. We were founded upon Biblical principles. Our constitution goes hand in hand with that. We're battling with each other right now, you know, over things that were clearly right and wrong before.

Seriously, a kid has no idea. They're being indoctrinated. They're being indoctrinated even through commercials, Disney World, Coca-Cola commercials, the restaurants they go to. And then when they want to be what it is that they were pushed to be, we mutilate their bodies and it's irreversible. It's horrendous. It's a horrendous evil.

And with that, I go. I just can't believe where we're at. And we're -- God raises up nations and he brings down nations, and we are in judgment right now. This is wrong, we need to be able to admit that it is wrong and to help the children to

have wholesome lives that history prior to us -- this is just recent this -- what we're battling with right now. I'm just -- you know, not well-studied or anything, but I think it's 1,500 years that we've been living in Judeo-Christian principles, you know, and it's just recently that we're throwing any mention of God, the Bible, under the bus. They're not allowed to hear it. They're not allowed to know it. If you feel like you want to have pleasure this way or that way, with this, with that, you can and we're going to support it and do whatever it is so that you can never change your mind again and give you nothing wholesome to hold onto. That's all.

(Applause.)

A VOICE: Amber Hand. Amber Hand.

MS. HAND: Hi, I'm Amber Hand and I am just with the body of Christ.

So I come today because I represent -- well, I come from a family, my mom was gay and my dad was gay. He struggled with his identity his whole life, but he fought against it because he was a Christian. And I was taught by my dad I was a little girl, and by mom, I was a little boy. And so I got real confused, you know what I mean, and

I'm 36 today and I just realized -- last year I was thinking about getting a sex change still. I've always thought about it. And when I was a kid, I was like, "When I get boobs, I'm going to cut them off with a butter knife," you know what I mean?

And when we're kids, we're so impressionable. I remember my sister going and seeing my dad use the bathroom, and she went to use the bathroom like him, but he corrected her, you know, because we have to teach these kids right from wrong. And it's wrong to take kids and teach them, "Hey, you can make whatever decision you want and you don't even know mentally what you're really going through as a child." We need to take Medicaid and treat people for psychiatric problems and depression and teach them like you can be a female, it's okay to be a female today and say that you're a woman, you know, like -- and I just realized now at 36 that I want to have a baby, and if I had done that, I would have never been able to have a child.

And I just have to say that the Bible says, "Beloved, I wish above all things that thou mayest prosper and be in health even as thy soul prospers." And when we struggle with identity, our souls are in turmoil. And if we just begin to

realize that we just need to teach these kids right from wrong and that it's not okay to change your identity when God made you a male or a female, and when a little boy puts on a high heel because he sees his mother wearing a high heel, it's just play, like it's okay, but that's not what you wear, and teach him what to wear. We just don't understand as kids what's going on until somebody teaches us. We have learned behavior. We're programming kids these days with everything --

A VOICE: Time's up. Please wrap it up.

MS. HAND: -- (inaudible) around us to be somebody we're not. God bless.

(Applause.)

A VOICE: Shauna Peace.

MS. PEACE: Hi, my name is Shauna Peace, and I am just am here to speak in support of Rule 59G-1.050 to ban Medicaid funding on transgender surgery and treatment.

Children are being pressured and socialized at a very young age to identify as transgender. Much of the pressure is coming from on-line social networking sites that celebrate and encourage transgenderism while denying normal heterosexual behaviors. It accounts for much of the metric rise

in the children's identifying as transgender in the recent years. It has doubled since 2017, according to the news sensors for the Centers for Disease Control and Prevention.

The most thorough followup of sex reassignment people, which was conducted in Sweden, documented that 10 to 15 years after surgical reassignment, the suicide rate is twenty times to comparable peers. The alarmingly high suicide rate among post-operative transgender demonstrates the deep regret that may feel after irreversible mutilating their bodies with these barbaric procedures.

I am here today because I have had children that have battled with identity and sexual identity, and that my stepson is now identified as female. He wanted to when he was younger in years, to change, but now that he has gotten into his 20s, he has now decided that he wants to have children, and if you mutilate these children's bodies at an early age, they don't understand that they will never be able to procreate ever again. Whether you go female or male or male or female, neither sex will be able to procreate ever again. And I just think it's mutilating and it's not right.

Thank you very much.

(Applause.)

A VOICE: The next speaker, Leonard Lord.

MR. LORD: My name is Leonard Lord. I am much in favor of the bill.

Even as a boy, I wasn't comfortable in my body because I didn't know why I was here. So when I got the age to say, "I want to find out why I'm here," I spent three days fasting, praying, seeking God. He brought me to his Word, and I found out that the only way I got comfortable in my body was to know what I was created for.

And so what I found, either we're playing games, or if we really believe there's a God and the Bible is true, we find out this whole problem happens because we do not retain the knowledge of God in our conscience and are given over onto our own deception.

And now I hear all of the mental problems we're having. Well, it's real simple. God's spirit is the answer to what's missing in our lives. We're only complete in Jesus Christ. And the scripture says in Timothy 1:7, God has not given us a spirit of fear, we ought to fear man or woman, but he's given us power, love, and a sound mind. You take the Bible out of school, you take

God out of school, you take prayer out of school, and what have you got? You have no power, you have no love, and you have no sound mind.

So I'm just saying let's go back to getting mentally right is the only way I can at 75 is to know God created me, his Word is true, live in supernatural peace and joy and know where you'll spend eternity and don't live confused.

A VOICE: Thirty seconds.

MR. LORD: The devil is the author of confusion. Get a pure heart and live in peace and joy and enjoy things. If you spend your life trying to find out if you're a man or a woman, you'll never know why you're here.

All I can say, God bless you, I'm in support of the bill, and hopefully America will wake up and be a shining city on a hill for all the nations one more time. Lord bless you.

(Applause.)

A VOICE: Pam Olsen. Pam Olsen.

A VOICE: Dan or Pam?

A VOICE: Pam.

MS. OLSEN: It's me, Pam Olsen.

Thank you for this proposal. I've read all the pages. It's excellent. I am for stopping

Medicaid from paying for children and teenagers to have sex changes.

I've talked to a lot of kids that are confused, and they are confused. That's what's going on today. There is so much onslaught against these kids, and you've got kids saying, "I'm a boy, I'm a girl; no, I'm a girl, I'm a boy." You have kids today saying, "I'm a furry animal." Are we going to start paying for them to have furry animal body parts put into them? I mean, where does this stop?

And I am so thankful that this has been proposed, that we will stop the madness in Florida and we will not do this. I hope that you guys do approve this today because it matters for the sake of the children. You know, I've got 12 grandkids and I'm going to fight tenaciously, not only for my grandkids, but for their friends and for all the children across our state, our nation. We need to say stop the nonsense and let's do what is right. There are boys, there are girls, there are men, there are women.

Thank you so much for approving this. I believe you will do that. Thank you.

(Applause.)

A VOICE: Jon Harris Maurer.

MR. MAURER: Good afternoon. My name is Jon Harris Maurer and I'm the public policy director for Equality Florida, the state's largest civil rights organization based on securing full equality for Florida's LGBTQ community.

The proposed change to Rule 59G-1.050 is without sound scientific basis, it is without legal basis, and it is clearly discriminatory. The agency should reject it.

The proposed rule is about politics, not public health. We urge you to listen to the numerous medical professionals opposed to the rule. Experts from the country's and the world's leading health organizations disagree with the fundamental premise of the proposed rule. They endorse gender-afforming [sic] care. These organizations represent millions of medical professionals, and they recommend gender-affirming care. We're talking about the American Academy of Pediatrics and its Florida chapter, the American Medical Association, the American College of Obstetricians and Gynecologists, the American College of Physicians, the American Psychiatric Association, the American Psychological Association, the

American Academy of Family Physicians, the American Academy of Child and Adolescent Psychiatry, the Endocrine Society, the Society for Adolescent Health and Medicine, the Pediatric Endocrine Society, the World Professional Health Association for Transgender Health, and others; again, representing millions of medical professionals.

Furthermore, AHCA lacks the specific delegated rulemaking authority to adopt the proposed rule. The statutes that AHCA names as its authority to make this proposed rule --

A VOICE: Thirty seconds.

MR. MAURER: -- grant no authority for (inaudible) patient of the individual role for health care practitioners to make decisions with their patients.

The rule is simply discriminatory, it undeniably targets the transgender community. You may not understand what it's like to be transgender --

A VOICE: Fifteen seconds.

MR. MAURER: -- or to be a parent of a transgender kid just trying to find the best care for your kid, but transgender Floridians are here in this audience and they're telling you about how

harmful this rule would be to the more than 9,000 transgender Floridians on Medicaid. We know these therapies are safe because the agency is not opposing them for all Floridians.

A VOICE: Sir, please wrap it up. Your time is up.

MR. MAURER: In conjunction with the state willingly ignoring the body of scientific evidence that supports gender-affirming care, there's no question of the politically-calculated animus behind this proposed rule. Please reject the proposed rule.

(Applause.)

A VOICE: I appreciate your comments. I would just ask for decorum in the crowd. We want to give everybody equal opportunity to speak.

A VOICE: Next speaker, Anthony Verdugo.

MR. VERDUGO: Thank you. Good afternoon. I want to start off by thanking all of you for being here today and for your public service.

My name is Anthony Verdugo. I am the founder and executive director of the Christian Family Coalition. We are a leading human rights and social justice advocacy organization of Florida, and we're here to strongly support Rule 59G-1.050

to ban Medicaid funding for transgender surgeries and treatment.

They call it gender-affirming care. They don't care and it's not affirming. Let's get that straight. And we know that because of heroes who are among us here today, folks like Chloe Cole and Sophia Galvin. They are heroes because they've had the courage to come out and speak the truth in love.

And everyone needs to be respected and treated with dignity, but this is a war on children. These are crimes against humanity. Groomers are using their authority as adults to pressure children and ruin their lives.

I'm going to share with you about a brand, the No. 1 prescribed puberty blocker in America. It's called Lupron. And they themselves list on their package that "Emotional instability is a side effect and warrants prescribers to monitor for development or worsening of psychiatric symptoms during treatment."

These so-called medical organizations which were just listed --

A VOICE: Thirty seconds.

MR. VERDUGO: -- have been discredited.

World-renowned organizations such as the Royal College of General Practitioners in the United Kingdom, Australian College of Physicians, and the American College of Pediatricians -- and I will end with their quote -- say, "Americans are being led astray by a medical establishment driven by a dangerous ideology and economic opportunity, not science and the Hippocratic oath." The suppression of normal puberty, the use of disease-causing cross-sex hormones, and the surgical mutilation and sterilization of children constitute atrocities to be banned, not health care. Let kids be kids.

Thank you.

(Applause.)

A VOICE: Next speaker, Roberto Rodriguez.

MR. RODRIDGUEZ: Thank you very much for this opportunity. I love America as a veteran, ex-police officer, father, grandfather -- let me see what else, you know, and a father of a veteran who is serving in the Navy today as a pilot. And first of all, I wanted to thank you. You guys made me cry. Why? Because, you know, I have a question. Has -- you know, anybody can answer it. Has a doctor ever been wrong? You know, has a parent ever been wrong? Has teachers ever been

wrong? Have scientists ever been wrong? But, then, why are we listening and waiting for scientists and doctors to talk different to what we have evidence here today?

We have the evidence right here today. They came walking in this place and we're being blind to them, and I want to recognize you and I want you to let you know that the true dream is interwoven in every atom of your existence. God will fulfill his true dream to you, no matter what man try to do to you. You have a purpose, you have a reason, and today proves it.

And I'm here to tell you that this rule, we need to go ahead, I support it. We need to stop being ignorant to what faces us and listening to people.

I am from the Centers of God and I have multiple churches that will stand here today. So I'll tell you what, we're bigger than any organization there is right now and represent that we are for this rule.

God bless you and thank you. We love you guys for serving. Thank you.

(Applause.)

A VOICE: Next speaker, Michael Haller, M.D.

All right. Michael Haller, M.D.

DR. HALLER: Good afternoon, everyone. My name is Michael Haller and I am a graduate of the University of Florida's College of Medicine, pediatric residency, and the pediatric endocrinology fellowship. I hold a Master's in clinical investigation and I am the professor and chief of the Pediatric Endocrinology Division at the University of Florida. The views expressed here are, however, my own.

I have trained thousands of medical providers, participated in the development of national guidelines, and have treated tens of thousands of children, including many transgender youth.

I provide this background with full humility, but also to establish myself as an actual expert, both in the management of gender-diverse youth and as one who can review and analyze relevant literature.

The Gapums document and proposed rule change seeking to remove Medicare -- medical -- Medicaid coverage for gender dysphoria makes numerous false claims, uses a biased review of the literature, and relies on more so-called experts who actually lack actual expertise in the care of children with

dysphoria.

While there are a number of flaws, the state's plan following deserves specific commentary.

First, the state's primary assertion that gender-affirming therapy has not demonstrated efficacy and safety is patently false. Nearly every major medical organization that provides care for children, as you heard previously, have provided well-evidenced guidelines supporting gender-affirming care as the standard of care. The assertion from the state, the data included in those guidelines, are not as robust as the state would like them to be --

A VOICE: Thirty seconds.

DR. HALLER: -- is at best a double standard, and is at worst discriminary [sic] political fear. The state is either unwilling or willfully chooses to ignore the totality of evidence in support of gender-affirming care, and the latter seems most likely.

Second, the state's use of --

A VOICE: Fifteen seconds.

DR. HALLER: -- (inaudible) experts as (inaudible) advisers seeking to discredit evidence used (inaudible) of care is laughable. Several of

the state's own experts have been legally discredited from testifying as such in cases regarding gender-affirming care, while others have acknowledged publicly that they have never provided gender-related care to children.

A VOICE: Wrap it up.

DR. HALLER: The proposal to limit gender-affirming care to those dependent on Medicaid is poorly conceived, is likely to cause significant harm to Floridians dependent on Medicaid, and should be rejected. Thank you.

(Applause.)

A VOICE: Next speaker, Robert Yules.

Jason, did you want to comment?

A VOICE: I'm sorry, we have -- the panel has one comment to that. I'm going to refer this to Dr. Van.

DR. V: So just some insight into the support of gender-affirming care by the large societies, medical societies in the United States. The American Academy of Pediatrics has actually made a statement against this -- this, and the Florida chapter as well.

These are not standards of care. Standards of care by definition are an arduous process of

listening to all input from every side, every aspect, of a medical condition, and these individuals get together and they agree on someplace in the middle that they can all live with as a then standard of care.

These are merely guidelines. The guidelines from the Endocrine Society specifically state they are not standards of care. They're just guidelines. They are the opinions of the individuals who wrote the guidelines. The Endocrine Society guidelines were written by nine people in the first go-round and ten in the second go-round, all of which were ideologues from the World Professional Association of Transgender health.

That group -- that interest group excluded world renowned experts in the field and did not listen to their input, didn't include their input on purpose. And so it's not surprising that you come up with one view that does not really represent any kind of standards of care.

So 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.

(Applause.)

A VOICE: Mr. Yules. Mr. Yules.

DR. HALLER: I would also --

A VOICE: Sir, you've spoken already. If you have further comments, please submit them in writing.

A VOICE: No, I'm sorry, Dr. Haller. If you have further comments, you can -- you can refer them in writing. You can refer them in writing, Doctor.

A VOICE: Robert Yules.

MR. YULES: Yes, my name is Robert Yules. It's an honor and privilege to be here. I was born and raised in St. Petersburg, Florida, and my, how things have changed. Forty-three years ago, my senior high school class came here to view the legislature, and the topic of the day was about dog-catching rules in the state of Florida. My, how far we've come.

This was not even in the purview of anyone at that time. This was not in the purview of anyone ten years ago. This was not in the purview really of anyone five years ago to bring it to the state level, the city level, the classroom level, to be driven by the teachers' unions with all of their ideology, and really it begins and ends when man

proclaims himself as God. The truth begins with me and it ends with me. And our country is in a lot of trouble because people aren't willing to say "No, that's not your truth." There is a truth. That might be your perspective of the truth, but there is not your truth, your truth, your truth, my truth, his truth. It's not the way it works, and we're going down -- just even philosophically and morally, we're going down a very, very slippery road when we start delving into these things.

It's interesting to me also how a child cannot own this or own that or own this, and the thing we've been told for the last ten years, "Well, their brain's not fully developed until around 25." Everybody says that, right? Their brains aren't developed until they're 25, and now our governor caught such flack because he said don't teach kindergarteners --

A VOICE: Thirty seconds.

MR. YULES: -- about transgendering, leave it out till third grade. I think they should leave it out till 12th grade and let parents have those conversations with people. Put it back where parents talk to their own kids, and let's -- let's make school about science, technology,

engineering --

A VOICE: Fifteen seconds.

MR. YULES: -- and mathematics and get back where we need to be.

Thank you so much for your time. Thank you.

(Applause.)

A VOICE: At this time, we would like to remind everyone that they can submit comments in writing to medicaidrulecomments@ahca.myflorida.com. Information is provided on cards at the exit when we are finished, as well as up on the screen. We'll continue with the speakers.

A VOICE: Flaugh. Keith Flaugh.

MR. FLAUGH: Good afternoon. My name is Keith Flaugh. I am one of the founders of an organization called Florida Citizens Alliance, which is a not-for-profit organization of almost 200,000 parents and grandparents, and we focus on K through 12 education.

We have recently completed a detailed study in all 67 county school districts based on 58 novels that we found throughout. I've left a copy with Cole. I would encourage you to read it.

Twenty of those are LGBTQ and gender -- promoting gender dysphoria. Some of these

materials are actually designed for pre-K.

Children in our public schools are being purposefully confused, desensitized, and even pressured into abnormal sexual behavior. Gender idealogues are coaching kids to be into this dysphoria, and even telling them to threaten suicide.

There is a considerable debate in the psychiatric and medical circles about whether the transgender condition is biological or psychological. In numerous public schools, staffs and even teachers are aiding this dysphoria and purposely hiding what they're doing from the parents. Further, taxpayers shouldn't have to pay for this.

Florida Citizens Alliance strongly supports the rule of 59G-1.050, especially to protect minors from the harmful transgender surgeries, hormone blockers, and other unnatural therapies. Thank you.

(Applause.)

A VOICE: Robert Roper.

MR. ROPER: Hi, my name is Robert Roper. I'm here to speak in support of the rule to ban Medicaid funding for transgender surgeries and

treatments. The most important aspect of this rule is that it serves to protect the children of the state of Florida.

Gender confusion is the only disorder that comes with a false assertion that a child can actually be born in the wrong body. They are led to believe that some day they'll actually become a member of the opposite sex. That's impossible. Maybe that's why they call it "transgender." You never actually arrive at the desired outcome.

Gender confusion is the only disorder that the body is mangled to conform to the thoughts of the mind.

Gender confusion is the only disorder that the child actually dictates his or her medical care to medical and -- medical professionals and counselors, instead of the other way around.

Gender confusion is the only disorder that the parent can be completely excluded from determining what is best for their own child.

Gender confusion is the only disorder that the treatment takes the child down a dead-end road literally. What we are seeing in Florida and across the nation is a social media-driven epidemic manufactured by social media influencers making a

lot of money off the very vulnerable element of our society -- that's our children.

While most counselors somehow have been convinced that affirmation is the only way, even the APA would be the first to affirm that a child simply does not have the capacity to make these kinds of long-range decisions. In fact, you don't need to be a doctor --

A VOICE: Thirty seconds.

MR. ROPER: -- of psychology to know this. Ask any parent. They will tell you that a child wants what they want, and they want it now.

What some -- some will call on their faith, some will call on a counselor, but all do so to be delivered from the disorder, not to be sent deeper into it.

A VOICE: Fifteen seconds.

A VOICE: You don't give drugs to a drug addict, alcohol to an alcoholic, porn to someone addicted to pornography. This is not a form of treatment.

In closing, transgender regret is among the fastest-growing movements on social media today --

A VOICE: (Inaudible).

MR. ROPER: -- on Reddit this morning. I

found a thread with 35,600 entries of people regretting their transgenderism. It increased to a hundred more while I drove here today.

Watchful waiting from loving parents yields an exponentially higher success rate of resolving gender disorders than any prescription drugs or surgery, 90 plus percent. This rule will protect Florida residents.

(Applause.)

A VOICE: Carl Charles.

MR. CHARLES: Good afternoon. My name is Carl Charles and I'm a senior attorney in the Atlanta, Georgia, office of Lambda Legal, the nation's oldest and largest legal organization fighting for the rights of LGBT people and everyone living with HIV.

We are here today to share that we strongly oppose and are deeply disturbed by AHCA's notice of proposed rule, which if approved will remove coverage of medically-necessary care for transgender youth and adults from the Florida Medicaid program. This essential and in some cases life-saving care is clinically effective, evidence based, and widely accepted and used by medical professionals across the country to treat gender

dysphoria.

Unlawful exclusions of this kind cause significant harm to a state's most vulnerable residents. Indeed, should this proposed rule be adopted, it will cause serious, immediate, and irreparable harm to transgender Medicaid participants in Florida who already experience well-documented and pervasive stigma, discrimination in their day-to-day lives, including significant challenges, if not all-out barriers to accessing competent health care services.

We are especially concerned by the administration's characterization of this care as experimental and ineffective. This is contrary to all available medical evidence and relies on misrepresentations of the findings of various studies, as well as reports by so-called experts, one of whom is on this panel, who have been discredited and notably do not treat transgender people --

A VOICE: Thirty seconds.

MR. CHARLES: -- in their medical practice.

Finally, I would like to note for the record as to whether or not this was a negotiated rulemaking process and who on the panel is a

transgender Medicaid recipient in Florida. Okay, there's no one.

Finally, singling out transgender Medicaid participants for unequal treatment by denying them coverage for services that non-trans Medicaid participants access plainly violates the equal protection clause of the U.S. Constitution and federal law.

A VOICE: Time. Please wrap up your comment.

A VOICE: Furthermore, Section 15-57 of the Affordable Care Act prohibits discrimination on the basis of sex by any health program or activity receiving federal financial assistance.

Finally, shame on you all for proposing this rule.

(Applause.)

A VOICE: Jason, did you want to comment?

A VOICE: Just quickly, I would like to refer everyone to the Gapums report, in particular the numerous appendices that we attached to that report. There have been references to the numerous clinical organizations that have endorsed these procedures, and in particular, I would refer you to Dr. Canter's report, pages 27 through 28 -- I'm sorry, pages 32 through 42, which go through each

one of those organizations. Thank you.

A VOICE: Speaker Ed Wilson.

MR. WILSON: Ed Wilson. I've traveled here today to speak in support of Rule 59G-1.050 to ban Medicare funding from being used for transgender treatments and surgeries.

This rule will protect children who are not mature enough to be comfortable in their own body or to have sexual desires that they have not gone through puberty yet from making mistakes that will destroy their lives.

Children are being misguided into believing that they're transgender. Taxpayer money should never be used to destroy innocent lives.

Transgender treatments and surgeries never actually succeed in changing someone to the opposite sex, but do cause permanent harm to the people who undergo such treatments.

Health care professionals need to focus on healing the mind of confused and/or abused people, not mutilating their bodies. As Anthony already quoted, I'm going to skip part of the quote from the American College of Pediatrics, but it ends with, "The suppression of normal puberty, the use of disease-causing cross-sex hormones, and the

surgical mutilation and sterilization of children constitute atrocities to be banned, not health care.

Please take their advice. Ban these atrocities --

A VOICE: Thirty seconds.

MR. WILSON: -- and keep Medicaid about health care. Thank you very much.

(Applause.)

A VOICE: Speaker Suzanne Zimmerman.

MS. ZIMMERMAN: I'm Suzanne Zimmerman, and I am merely a mother, grandmother, great-grandmother, aunt, great-aunt, and specifically great great-aunt of a young child who is going through the throes of gender dysphoria from the age -- a young age. He is now 8 years old, and I pray that our state doesn't make it easy for her parents to be dissuaded toward gender change.

I listened to the young people here who have gone through this, and I think they speak volumes more than any of the rest of us could say because they've been through the difficulties and they've learned through the difficulties.

And my bottom line is God doesn't make mistakes. We're all created equal and different,

each in His image, and there are many, many different people in this world and we are to love them all. It's a commandment, it's God commandment, and He loves us all.

I urge you to support this ban to make it easy through Medicaid to have --

A VOICE: Thirty seconds.

MS. ZIMMERMAN: -- the surgery for children who are children with very young brains. Have a heart and please pass this ban. Thank you.

(Applause.)

A VOICE: Judy Hollerza, H-o-l-l-e-r-z-a.

MS. HOLLERIN: I'm Judy Hollerin, poor work -- poor penmanship apparently.

I support -- I support that we ban -- that we ban this. I -- every day, of course, we wake up seeing new things that we can't believe are happening to us today. And I support everything that's been said -- everything in support of that has been said today.

The idea that Medicaid should be doing -- should be supporting this or paying for it -- again, this expansion of us paying for these kinds of critical things without further thought. My, I -- I would like to look 20 years younger, but I

do not expect Medicaid to be paying for it. Enough said.

(Applause.)

A VOICE: Next speaker, Ezra Stone.

MR. STONE: Good afternoon. My name is Ezra Stone and I'm a licensed clinical social worker.

Social work is a profession with a long history of valuing human dignity and autonomy, and according to the values of my profession, I have an ethical obligation to support my clients in reaching their fullest potential, problem-solving barriers to treatment with them, and collaborating with other professionals.

Additionally, we have a professional obligation to provide evidence-based treatment, and there is significant research that medical transition is safe, effective at relieving symptoms of dysphoria, and improves mental health.

In my private therapy practice, my clients express tremendous relief at being able to access medical care, which decreases their anxiety and depression and increases their feelings of safety, comfort, and joy as their bodies and minds become more congruent. Understanding and being seen as their true selves creates a sense of belonging,

which is a fundamental human need.

On the other hand, the current political climate in the state is causing significant harm to transgender, nonbinary questioning and gender diverse Floridians. My clients report increases in anxiety with each proposed anti-LGBT measure the state takes, fear violence in their daily lives, and worry about their continued access to medical care.

These observations from my clinical practice support the research on the minority stress model, which demonstrates that expecting experiences of harm, marginalization, and rejection have a negative impact on people's mental health and overall well-being.

Passing this change to Medicaid --

A VOICE: Thirty seconds.

MR. STONE: -- will not only take away medically-necessary care from several thousand of the most vulnerable Floridians, but it will also further create a climate of fear for LGBT people and their health care providers across the state.

(Applause.)

A VOICE: Jason. Speaker Peggy Joseph.

MS. JOSEPH: Hello. I'm Peggy Joseph, and I

would just like to share some thoughts from an author and doctor, Ryan T. Anderson, who wrote about -- a book called, "When Harry Became Sally."

So in 2016, the Obama administration and the Center for Medicare and Medicaid Services revisited the question of whether sex reassignment surgery would have to be covered by Medicare plans. It refused on the grounds that we lack evidence that it benefits patients. They stated, "Based on a thorough review of the clinical evidence available, there is not enough evidence to determine whether gender reassignment surgery improves health outcomes."

There were conflicting study results, and the quality and strength of evidence were low. Many studies that reported positive outcomes were exploratory-type studies with no confirming follow-up. The author says, "The lack -- the lost of follow-up could be pointing to suicide."

The largest and most robust study, a study from Sweden, found a 19 times greater likelihood of death by suicide and a host of other poor outcomes.

To provide the best possible care serving the patient's interest requires an understanding of human --

A VOICE: Thirty seconds.

MS. JOSEPH: -- wholeness and well-being. The minimal standard of care should be with a standard of normality. Our brains and senses are designed to bring us into contact with reality. Thoughts that distort --

A VOICE: Fifteen seconds.

MS. JOSEPH: -- (inaudible) are misguided and cause harm. Okay.

(Applause.)

A VOICE: Next speaker, Jack Barton.

A VOICE: Actually, I have one comment with respect to that, so as a partial addendum to my earlier answer focusing on some of the clinical organizations in the United States, but I wanted to also mention because it has come up a couple times here, that the Gamus report on pages 35 and 36 also talks about international consensus as also talked about in Dr. James Canter's report on pages 42 through 45. So I would encourage people to look at that as well.

A VOICE: Go ahead.

MR. BARTON: My name is Jack Barton. I'm here with the Christian Family Coalition. I'm an Assembly of God pastor. The 37 years I have

counseled, among them I've counseled lesbians, gays, and bisexuals. I believe in First Corinthians 6:9, that people can escape from that life. Unfortunately for the transgender, they suffer. These young people have made that clear.

I believe that gender dysphoria should be labeled as child abuse, it is not something that should be happening to our children, and with the doctors that will participate in this, it's not so unlike the doctor who tears a child apart in abortion and calls it health care.

These are the issues: The puberty blockers, the hormone manipulations, that's not science. The only name that was left out before was Anthony Fauci. I kept waiting to hear them to say that.

Every -- any procedure like this should be labeled criminal. You have a child that at that age doesn't know if they like vanilla ice cream or if they like chocolate ice cream, and yet they're going to let them march in and either make that decision to be led down that path. 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.

Suicide that we talk about so much comes when a person has followed up on these things, has done it, and now they are confused because they still don't find the completion that they thought they felt.

Among those that go through these processes, many of it comes from child abuse that happened when they were kids, some who have wanted to have acceptance by others and were rejected. One man, his grandmother wanted a granddaughter. She dressed him like that, and so he adopted that life.

A VOICE: Thirty seconds.

MR. BARTON: I'll close with this. There are two genders, male and female. Women bear children, women breastfeed, women have menstrual cycles. Men do not. I would not provide the anorexic with food and I would not say give money to do something that would harm a child.

A VOICE: Fifteen seconds.

MR. BARTON: It's a terrible thing to do and I ask you to stand your ground.

(Applause.)

A VOICE: Jose Martin.

MR. MARTIN: Good afternoon. Thank you for letting me speak. I'm also with the Christian

Coalition, and I'm here to speak in support of Rule 59G-1.050. I am a father and a grandfather, and I am here to stand against mutilation that we all are asked to fund. The people we are talking about need counseling, not promotion to a destructive choice.

I also want to remind that one day we will all stand before a living God and give account for where we stand on this and other issues. And I also want to thank you brave people, who I think are more qualified than all the other experts that came up, because you are living and you lived through it and you know the results of that, and I thank you. Thank you very much.

(Applause.)

A VOICE: Folks, we have a number of speakers coming up from the same organization. We just ask that you be respectful of others' time. We've got a number of speakers to get through before 5:00 p.m., so if you could just be brief and support comments of others, if possible. Thank you.

Next speaker, Bob Johnson.

MR. JOHNSON: Good afternoon, Bob Johnson. I am a retired and recovering attorney, but I am -- and I'll be very brief.

I say thank you to the Florida Division of Medicaid for putting together this report. I've read the whole report. It's not my area of expertise, but I've had significant experience working with the development of agency rules, statements of need, and reasonableness as we call them in the state that I come from, and I just want to compliment the agency. I've read through it. I think the case is compelling for the rule change. I strongly support the rule change.

There is specifics in there again that's not an area that I studied, but in reading the report and looking how thorough that it was put together, the case has been made for the need to adopt this rule change, the case has been made for the reasonableness of what you're proposing. I just found it compelling the fact that the FDA does not approve any medication as clinically indicated for gender dysphoria. The fact that there's no randomized, controlled trials for the use of these puberty suppression, that's the gold standard, I know, in medical studies, and there are no randomized, controlled trials, and the fact that there's no long-term data. I just think there is so much concrete, substantial evidence that totally

justifies it, and I would just echo many of the others that have testified here today. I urge you to go forward, adopt these rules, changes --

A VOICE: Thirty seconds.

MR. JOHNSON: -- (inaudible) we need them, we need them in the state of Florida. Thank you.

(Applause.)

A VOICE: Next speaker, Sandy Westad, W-e-s-t-a-d, I believe.

MS. WESTAD: My name is Sandy Westad and I'm also here with CFC, Christian Family Coalition.

I -- I want to speak from the heart. I'm a mother, I'm a grandmother, I'm a sister, whatever, and my heart is breaking for what these kids are going through. It just seems to me that if the parents -- the parents need to stay in control. They need to stay in the authority of their children. They need to be able to speak to their kids about the sex and the transgender.

Kids play house. They pretend. You know, they do things in a play world, but they don't want to be or understand or even know what it is to change from one sex to another. They pretend. I remember my sons playing and pretending they were girls and sometimes they would pretend they were

boys, but they were boys and they grew up to be boys. They didn't want to be girls. They felt that that was what they were supposed to be. Jesus made them boys, and they were going to stay boys. But the thing is we -- we need to understand that children cannot make those kinds of decisions. They cannot --

A VOICE: Thirty seconds.

A VOICE: -- decide who they are. The parents need to be their guide, and the parents -- God gave children parents for a reason.

So I just support this bill, this rule, and I thank you so much for everyone that's here.

(Applause.)

A VOICE: Gail Carlins.

MS. CARLINS: Good afternoon. I'm Gail Carlins and I'm with CFC also. And I am in favor, I support this rule change here with not having the funds -- the Medicaid funds go to supporting these.

My beliefs are based on the Bible, and the Bible, I believe, is the only truth that there is. And the Bible says, as was mentioned a couple times, God created male and female. If you want to bring science into it, females have two X chromosomes, males have an X and a Y chromosome.

It's an impossibility to change from one to the other. That cannot be done. And so no matter what kind of mutilation or anything is done to a person, they can't change it.

So, again, I am in support of this bill and I thank you for your time.

(Applause.)

A VOICE: Dorothy Berring.

MS. BERRING: Good afternoon. My name is Dorothy Berring, also with the Christian Family Coalition. I also live in The Villages, Florida.

First of all, I would like to thank our brave governor once again for bringing this to the forefront. We are -- Florida definitely is going to make change, and thank you to these brave people and to Amber for not going along with what you were trying to be brainwashed into believing.

Again, it's strange, you know, they're definitely targeting our -- our youngest. We can't seem to find baby formula anywhere, but yet Medicaid can fund this nonsense.

Again, this has to be left up to the parents. Whatever you choose to practice in the privacy of your own home is your business. I'm not discriminating against any genders or whatever. I

just -- it needs to be taken out of the schools, and this doctor that was from UF or USF or whatever, it's shameful, shameful what you are trying to teach our students, and that's why we are in this bloody mess right now. Okay? And this needs to be changed --

A VOICE: Thirty seconds.

MS. BERRING: -- and you all need to listen.

And thank you, doctors, for being here and for giving us this forum. Thank you.

(Applause.)

A VOICE: We would ask that the comments be focused on the rule and be respectful of other speakers, please.

Troy Peterson.

MR. PETERSON: Good afternoon, Troy Peterson. I come supporting Anthony and Christian Family Coalition. I'm also the President of Warriors of Faith here in Florida. We brought a few people with us from the Tampa Bay area, and really we come representing thousands that stand in agreement with this rule.

And I want to thank you, doctors. I read the 40-page report. I'm not a doctor, I'm a pastor. But when I saw the evidence, I could clearly see

that we need this rule.

In the book of Genesis, in the beginning God created man in his own image, male and female, and then he said, "Be fruitful and multiply the earth." So that's why I'm here is because I'm opposed to even that doctor back there. And I appreciate you said that because if I had any authority in the medical field, I would have his license revoked.

The most thorough follow-up of sex reassigning people, which was conducted in Sweden, documented that 10 to 15 years --

A VOICE: Thirty seconds.

MR. PETERSON: -- of surgical reassessment, that the suicide rate is 20 times that of the comparable peers.

I also read in the medical evidence that 50 percent --

A VOICE: Fifteen seconds.

MR. PETERSON: -- of the gender identity-confused children have thoughts of suicide.

Thank you for your time.

(Applause.)

A VOICE: Janet Rath.

MS. RATH: Hi, my name is Janet Rath. I'm a

mother, a grandmother, and a new great-grandmother. And I think 50 years ago as parents, we were smarter than what is going on today. Parents are left out of their children's lives. Some of it is the parents' fault, and some of it's the teachers' faults.

I have a granddaughter that's a teacher who has said that if she has a child that comes in and identifies as a cat, she must have a litter box there and a bowl of water.

We are as a country going absolutely insane, absolutely insane. We all bought into Dr. Fauci, who was nothing but a money-grabbing liar -- pardon my French -- and we have been hoodwinked ever since. We have got to stop this.

Chinese children in third grade are learning advanced calculus. Our third graders are learning which bathroom to use. I'm sorry, but I do not want my great granddaughter growing up in this world if this is what it's going to turn into. We have got to change, and we had best do it now. Thank you.

(Applause.)

A VOICE: Gerald Loomer, L-o-o-m-e-r, Gerald.

MR. LOOMER: Good afternoon. My name is

Gerald Loomer. I drove three and a half hours from Lady Lake, Florida, to be here because I want to support Rule 59G-1.050. Especially I want to support the best governor in the United States, Ron DeSantis who also supports this.

(Applause.)

MR. LOOMER: But I'd like to share three quick stories with you. The first is the little girl who saw her brothers go fishing with their dad, out in the backyard playing catch with a football, says, "You know, I'd like to spend more time with Dad. If I were a boy, I could spend more time with Dad."

Or the boy who said, "You know, those girls, they're in the kitchen cooking with Mom, they go shopping with Mom, they're doing makeup with Mom. I want to spend more time with Mom. I think I should be a girl, then I can spend more time with Mom." Well, those things passed.

Remember the child who said, "Can I drive the car?" "Of course not, you're 13 years old." "Well, can I drink a beer?" "Of course not, you're 13 years old." "Can I smoke a cigarette?"

A VOICE: Thirty seconds.

MR. LOOMER: "Of course not, you're 13 years old." "Can I take hormones to block puberty?"

"No, you're 13 years old. Of course, you can. You know what you want." "Can I take cross-sex hormones?"

A VOICE: Fifteen seconds.

MR. LOOMER: "You're 13 years old. Of course, you can. You know what you want." "Can I have gender sterilizing surgery?" "You're 13 years old. Of course, you can, you know what you want." "Can I have body-mutilating surgery" --

A VOICE: Time. Please wrap up your comment.

MR. LOOMER: -- "that's going to alter my sex?" "Of course, you can, you's are 13 years old, you know what you want."

A VOICE: Sir, your time is up. Please wrap it up.

MR. LOOMER: How absurd is all of this? Continue to keep this resolution.

Thank you.

(Applause.)

A VOICE: Pastor Marta Marcano.

MS. MARCANO: Good afternoon. I'm Pastor Marta Marcano from (inaudible) Jacksonville, Florida. I'm a director of Protect our Children Project, Duval County chapter, and an organizer of the Christian Family Coalition in Jacksonville too.

I'm here to let you know that I'm support of the Rule 59G-1.050 to ban Medicaid funding for transgenders, surgeries, (inaudible) blockers, and other unnatural therapies.

Also, this rule protect taxpayers from being forced to subsidize the (inaudible) is driving by unethical pharmaceutical companies enriching themselves with the puberty blockers. That is an atrocity of children abuse.

World-renowned Swedish psychiatric, Dr. Christopher Gilbert, has said that pediatric confusion is possibly one of the greater --

A VOICE: Thirty seconds.

MS. MARCANO: -- scandal in medical history and call for an immediate moratorium.

As a pastor --

A VOICE: Fifteen seconds.

MS. MARCANO: -- I want to remind you that doc do not been a stumbling block for the little one, because Hebrews 10:31 said --

A VOICE: Time. Please complete your comment.

MS. MARCANO: -- "It's a fearful thing to fall into the hands of the living God."

Please protect our children. Thank you very much for this time.

(Applause.)

A VOICE: Paul Arrans.

MR. ARRANS: Good afternoon. My name is Paul Arrans. I'm a physician. In practice, I've had transgender patients, and I have transgender personal friends with whom I discuss their medical care at length.

With profound respect for the young people who testified earlier, I still oppose this amendment (inaudible) the preponderance of medical science and practice when we do irreparable harm to the health and well-being of thousands of transgender Floridians of all ages and their families.

The American Academy of Pediatrics and its Florida chapter representing thousands of board-certified pediatricians have directly reviewed many controversial assertions in your publication on gender dysphoria, and the Florida Department of Health's statement responded.

Contrary to an earlier comment, the Endocrine Society has stated, "Both medical intervention for transgender youth and adults, including puberty suppression, hormone therapy, and medically-indicated surgery has been established as the standard of care. Federal and private

insurance should cover such interventions as prescribed by a physician," end quote.

Gender dysphoria is very real. You can learn this for yourselves by meeting with transgender people. You will then realize that denial of appropriate gender-affirming care at any age would be inhumane and a violation of human rights. These medically-necessary treatments are the generally accepted professional medical standards, (inaudible) authoritative opposition to the proposed rule.

A VOICE: Thirty seconds.

MR. ARRANS: (Inaudible) to just rush this through, thereby putting the health and lives of trans people in danger.

It feels like Medicaid is crossing into a political lane by seeking to preempt provider/patient/family decision-making here, and I urge you to withdraw this proposal.

A VOICE: Fifteen seconds.

MR. ARRANS: This represents knowledge and practice regarding gender-affirming care. If you are still determined to address this topic, at least convene (inaudible) panels of experts, including transgender community members, who inform

yourselves and the public about the overwhelming evidence --

A VOICE: Time.

MR. ARRANS -- against denying coverage for gender-affirming care.

Thank you for the opportunity to testify.

(Applause.)

A VOICE: Thank you for that comment. I'm going to refer for further comment to Dr. Van. VANMOLE, VANMO, VENMO?

DR. V: I would encourage everybody just to read the Gaplins report, and particularly the attachment to it. A great deal of attention has been put in there into evaluating the science. And some of the studies that have been brought up, both pro and con, are involved -- they're specifically the flaws that are in so many of these studies. Specifically --

A VOICE: Hold on.

A VOICE: (Inaudible) while Dr. Vanmo speaks.

DR. V: Yeah, and by the way, I like the idea that everybody lets everybody speak. So it kinds of bothers me when I'm hearing speakers shout it down because they're saying something you don't like. How we treat other people with whom we

disagree is a reflection of our own character, not theirs. So, please, let -- due decorum.

First of all, the Endocrine Society's 2017 guidelines are guidelines, just that. And it states specifically page 3895 that they do not guarantee an outcome and they do not establish a standard of care. It's in black and white there.

I would refer you also, as is mentioned in the Gaplins report, the histories in the United Kingdom, Sweden, Finland, France, four nations that were leading this from quite some time, they did national-level reviews involving scientific organizations, divisions of governments, medical professionals. And mind you, these are nations that were leading it. And after review, they all came to the same conclusion, this should not be going on in minors at all under 16, and only between 16 and 18 under tightly-regulated studies, the kind of which we really don't see happening.

And they also came to the conclusion that strong psychological support is what's needed when we talk about evaluating kids for this. We have four decades of literature showing the overwhelming probability of mental health problems, adverse childhood events, neuropsychological problems like

autism spectrum disorder, and other things that need to be addressed. And, in fact, also for these nations, somebody strongly demonstrating psychologic instability -- quite specifically, you say you're suicidal -- blocks you from the transition pathway. They insist that those things be taken care of first because transition simply won't fix them. The underlying problems of a transgender youth become the underlying problems of an adult who identifies as transgender. That's what is going on here.

So, again, I'd refer you to the report and some of the other letter, complaints, that I've seen come in in the past 24 hours from the AAP, as well as from the Endocrine Society, what they're complaining about is actually addressed here, including some of the studies they bring up, and there too, it's a very well-researched document. The State of Florida put a lot of effort into this.

You're free to disagree, but please make sure you've read it and understand it before you do.

A VOICE: Just to be a little bit more specific with respect to the report, I'd refer you to Dr. Rigner (inaudible) Peterson's report, which is Attachment C to the Gaplins report, and also a

doctor named Paul Hruz, H-r-u-z. Title of his publication is, "Deficiencies in Scientific Evidence for Medical Management of Gender Dysphoria." He did not provide an expert report for purposes of this report, but he is published in medically reviewed literature, and I would encourage you to read that as well.

Thank you.

(Applause.)

A VOICE: January Littlejohn.

MS. LITTLEJOHN: My name is January Littlejohn. I am a mother of three children and a licensed mental health counselor.

In the spring of 2020, our 13-year-old daughter told us that she was experiencing distress over her sex and that she didn't feel like a girl. She had expressed no previous signs of gender confusion, and three of her friends at school had recently started identifying as transgender.

As we tried to understand our own observations and seek professional help, we discovered that her middle school had socially transitioned her without our knowledge or consent. Her mental health spiraled. We worked with a psychologist to help our daughter explore and resolve co-occurring

issues, including low self-esteem and anxiety. We also gave her more one-on-one time, in-person activities away from trans influences, limited her Internet use, and declined to affirm her newly-chosen name and pronouns. We set appropriate boundaries and allowed her to choose her hair style and clothing, but denied harmful requests such as breast binders, puberty blockers, cross-sex hormones, and surgeries.

It was clear from our conversations that our daughter was uncomfortable with her developing body and had an intense fear of being sexualized. She 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 her pain.

What she really needed was for us to help her make sense of her confusion and remind her that hormones and surgeries could never change her sex or resolve her issues.

A VOICE: Thirty seconds.

MS. LITTLEJOHN: I shudder to think what could have happened if we had affirmed her false identity and consented to medical treatment as opposed to what we did, which was to lovingly affirm her as

she is: Beautifully unique and irreplaceable and undeniably female.

A VOICE: Fifteen seconds.

MS. LITTLEJOHN: Our daughter has desisted and is on a path to self-love, but, unfortunately, gender-dysphoric children are being encouraged through activism and peer pressure to disassociate from their bodies and to believe their body parts can be simply removed --

A VOICE: Time. Please finish your comment.

MS. LITTLEJOHN: -- modified, or replaced.

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. These children need love and therapy, not hormones or surgery.

Thank you.

(Applause.)

A VOICE: Next up, Kendra Paris.

MS. PARIS: Hi there, my name is Kendra Paris. I still suffer from being an attorney. I'm a mental health attorney, and I wanted to follow up on the comment about the lack of peer-reviewed standards of care, because as an attorney, the lack

of peer-reviewed standards of care mean that a lot of people who are harmed or experience bad outcomes from these surgeries or other interventions have no ability to sue, and I find that problematic as an attorney. They've had decades to create peer-reviewed standards of care, and they have not. And I suspect some people don't want those standards of care because it would open them up to lawsuits for bad outcomes, which is not happening right now and it really frustrates me.

You all are so brave. I'm so proud of you for coming and telling your stories.

We just don't know, and I want to talk about a particularized thing that we don't know yet. When you put a female on testosterone, within about five years, she's going to have to have a hysterectomy, though you passed most recent standards of care, recommend hormone -- cross-sex hormone therapy for females at 14. So we're talking about a potential hysterectomy before she turns 20. We have known for a very long time that hysterectomies correlated with negative mental health outcomes and cognitive decline. And we know that the earlier a hysterectomy is performed, the worse mental health and cognitive decline is. Essentially, the earlier

you do the hysterectomy, the earlier the onset of dementia.

And so what I am very concerned about is in, I don't know, 10, 20, 30 years, we're going to have an absolute wave of young females, 40, 50 years old, with early-onset cognitive decline --

A VOICE: Thirty seconds.

MS. PARIS: -- or dementia in our assisted living facilities.

And in surveys and anecdotal experience is starting to indicate that some individuals who are trans and have dementia forget that they're trans. In a state like Florida, we have substituted judgment.

A VOICE: Fifteen seconds.

MS. PARIS: So if they don't have written documentation allowing for their medical proxy to allow for detransition, they might be cut off. And I really worry that we have not considered all of the implications of this.

So I appreciate the rulemaking and I thank you --

A VOICE: Time.

MS. PARIS: -- for your time. Thank you.

(Applause.)

A VOICE: Nathan (inaudible).

MR. BRUMER: My name is Nathan Brumer. I am Florida's LGBTQ consumer advocate as appointed by Commissioner of Agriculture Nikki Fried. One of FDACS' many critical roles here in the state includes serving as Florida's consumer protection agency.

On behalf of health care consumers, I provide the following comments in opposition to the proposed changes to Rule 59G-1.050: As a state agency, FDACS encourages all consumers to remain aware, vigilant, and act when necessary, but to do so, we know consumers must be provided with accurate information, education, choice, safety, representation, and redress.

Documented, well-researched standards of care have been established, are based on a wide range of evidence, and conclude gender-affirming medical care is medically necessary and safe and effective. In other words, gender-affirming care is the standard of care, and the proposed rule as it stands would deny health care consumers in the state of Florida access to the standard of care.

State agencies must serve and advocate for all Floridians. We should not deny any Floridian the

ability to thrive. We serve the public good and we must defend the rights of every Floridian, including transgender Floridians, and this includes the right to nondiscriminatory health care coverage. We must work to increase access to health care, not lessen it or remove it all together.

A VOICE: Thirty seconds.

MR. BRUMER: On a personal note, Florida is my home state. I am one of thousands, tens of thousands of transgender Floridians here in our state who have had the privilege to have access to gender-affirming health care --

A VOICE: Fifteen seconds.

MR. BRUMER -- for decades who are happy and successful and thriving. I'm an attorney, I'm an advocate, and I work for and very hard and I'm proud to serve the State of Florida. We are part of the fabric of this nation --

A VOICE: Time. Please wrap up your comment.

MR. BRUMER -- and of this great state, and we deserve the rights and benefits afforded to all.

(Applause.)

A VOICE: Nathan Bremmer.

MR. NEWELL: Hi, I'm Nathan Newell. I think

we got the Nathans mixed up. Here (inaudible) for support. Tell you a little bit, I have a son, I have four children. My son, 15, is -- doing everything we can to keep him straight. He doesn't make good decisions. One of the things lately, you know those little things on the side of the road that flashes and tells you your speed? Well, we had one of those near our house. So he decides to take his dirt bike in pitch black and with his friends out there and go 80 miles per hour down the road. We know this because of the ring. He was bragging to his friends, so we watched the ring and saw that.

Then a couple days ago, he was upset with us and said he was leaving. So we said, "Where are you going to go, Hunter?" He goes, "I'm going to St. Teresa, I got friends down there." "How are you going to get there, Hunter?" "I'm going to ride my bike." I said, "It's going to take you forever," and he goes, "It's going to take me four hours."

So, anyways, this 15-year-old, he's not making good decisions. And to sit here and to even think that these kids can make a decision on what they want that's going to be with them for the rest of

life is child abuse. These doctors are despicable. They need to have their license taken away. They are a disgrace to the human race. It's just despicable to think that these people are taking care of us and taking care of our children, and I appreciate what y'all are doing.

(Applause.)

A VOICE: We'd ask that you please be respectful to the other speakers.

A VOICE: Thank you for your comments. We respect your comment, we respect everybody's comments, including the doctors that you referenced.

A VOICE: Nathan Brumer.

Dotty McPherson.

MS. MCPHERSON: Hi there, I'm Dotty McPherson. I'm speaking as the District 2 representative for the Florida Federation of Republican Women.

The age of majority is 18, but even at 18, children don't have the maturity to handle certain responsibilities given them, like driving, alcohol. Even older adults don't.

Your agency's safety net programs include programs for abused and neglected children, but not gender decisions. Please prevent funding the

destruction of children's genitalia and hormonal balance.

Please consider unintended consequences of, No. 1, is taxpayer money that will need to be used for lawsuits by those whose lives are ruined from surgeries that got -- that they got while they were immature or too young to understand, also by parents whose parental rights were denied to protect their children's future.

I grew up in a low-income neighborhood on the low-income side of town. When I got to junior high school, I saw how rich kids were, and a lot of them were just real brainiacs, and I felt so inadequate. I had a terrible inferiority complex, but I got over it. I graduated with honors from FSU. I had a good job and made a good life for myself and my four children. Life isn't fair. We've got to stop giving in to the poor, pitiful me syndrome. People need to get their brains right and --

A VOICE: Thirty seconds.

MS. MCPHERSON: -- get straight. Government has no business funding these things. Our elected governor has authority to make this rule, which should be upheld. Please support our governor's rule. Thank you.

(Applause.)

A VOICE: I'm going to get this first name wrong, but I think it's Marjorie Caulkins.

MS. CAULKINS: Hello, my name is (inaudible) Caulkins and I am from Milton, Florida, and I came in support of the ban of Medicaid funding for transgender surgeries and treatments.

I believe that Floridians do not need our taxpayers' money to be spent in this funding of surgeries that are both unnecessarily and tremendously harmful.

As a mother of two, I believe there is a war on our children and we need to stand on the right side of this war and protect our children, support our Governor DeSantis. We are blessed with our governor, and I think we should be on the right side and support this rule and ban Medicaid funding for transgender surgeries.

Thank you so much, and thank you for your service.

(Applause.)

A VOICE: James Caulkins.

MR. CAULKINS: Hi. I'm James Caulkins from Milton, Florida, and I just want to say we really need this rule passed to support Rule 59G-1.050 to

ban Medicaid funding for transgender surgery and treatment.

We are in a battle in this country, and I'd like to thank all the people who showed up today, because your voice matters. Our state -- the people have spoken. They elected the greatest governor in the United States, Ron DeSantis. They put Republicans in office in this state to stand for what's right, and this rule change is what's right.

We don't need this stuff, this evil, this Medicaid funding for transgender surgery. We don't need this in our state of Florida. We need to lead in Florida, we need to lead the other states in Florida against this evil transgender surgeries.

So please pass this rule. Thank you all so much for your public service and God bless the state of Florida. Thank you.

(Applause.)

A VOICE: Tuana Aman.

MS. AMAN: Thank you for the opportunity for us to be here. I am in support of the ban to the Medicaid funding for transgender surgeries and treatments. And let me say that years ago, I was told that I needed to go on hormone therapy, and I

had one doctor tell me that it was the right thing to do, but as I did more and more surg- -- more and more study and research, I saw the risks involved to hormonal therapy. And when someone tries to tell you there isn't any risk to these kinds of procedures and these kinds of things that are happening to young people, to young kids -- I mean, I'm an adult who's fully developed, right, as a human being now, right, and they say 25 generally, look at these kids and their development, the process.

And what I think is even more sad is that they're born like the young girl with a certain amount of eggs that will be released every month from the time she starts puberty, and here we're trying to prevent those natural things from occurring and expect it not to have any problems.

I was watching Bill Mayer, which he's not a favorite of conservatives, right? And he came out a couple of weeks ago and was slammed by the LGBT community because he said, "Isn't it interesting" -- and this is him, right -- "Isn't it interesting that if you look at Los Angeles and New York and Miami and all these different hubs, that's where this transgender service -- these surgeries

are going on, the focus," and he got slammed. They said they wanted him off the air, and, I mean, he had -- they had a campaign against him --

A VOICE: Thirty seconds.

MS. AMAN: -- because it was focused on the fact that he was just saying, "Isn't there something ironic about the fact that you look at the rest of the country and these things aren't going on, and then you look at these hubs where social engineering is happening and where people are being influenced that I" --

A VOICE: Fifteen seconds.

MS. AMAN: -- "can't go out into the media and say anything against transgender, because what will happen? I will be criticized and condemned." It isn't fair. I think it's right to be here and have the opportunity to give our voices, but I believe that the government should not be involved in supporting any --

A VOICE: Time. Please wrap up your comment.

MS. AMAN: -- kind of procedure for these young kids. Thank you. Amen.

(Applause.)

A VOICE: Jason, do you have a follow up?

A VOICE: Just very quickly. We appreciate

your comments, just like we appreciate the comments of everyone in this room and all the people that have made comments on-line and otherwise.

I just wanted to make sure -- clear, just so we're crystal-clear about the purpose of this rule is that we're not talking about a ban of treatment for gender dysphoria. We're talking about not covering through reimbursement in the Florida Medicaid program for the services that are enumerated in the rule itself.

I also want to make clear that there are other comprehensive coverage of services for gender dysphoria currently in the Florida Medicaid program, and I just want to read a couple of those: "Community-based health services provided by an array of provider types; psychiatric services provided by a physician or other qualified health care practitioner in office settings, clinics, and hospitals; emergency services and inpatient services in hospital settings; behavioral health services provided in schools and by school districts."

So I just wanted to make sure that everyone was crystal-clear about the purpose of this rule. I very much appreciate your comment and the

comments of everybody else.

A VOICE: Thank you, everyone, for your participation in this hearing. We will accept written material or comments until 5:00 p.m. on Monday, July 11, 2022. Comments may be submitted by e-mail to medicaidrulecomments@ahca.myflorida.com.

That being our time, this hearing is now closed. Thank you.

(Whereupon, the hearing was concluded.)

C E R T I F I C A T E

STATE OF FLORIDA)

COUNTY OF LEON)

I hereby certify that the foregoing transcript is of a tape-recording taken down by the undersigned, and the contents thereof were reduced to typewriting under my direction;

That the foregoing pages 02 through 91 represent a true, correct, and complete transcript of the tape-recording;

And I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

Dated this 19th day of July, 2022.

Clara C. Rotruck

CLARA C. ROTRUCK

Notary Public

State of Florida at Large

Commission Expires:

November 13, 2022

Commission NO.: GG 272880

From: Kumar, Vatsala (HHS/OCR) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FC510606A9034939AC2EB2C237DD8CF3-KUMAR, VATS <Vatsala.Kumar@hhs.gov>
To: de Kervor, Dylan (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91-Dekervor, D <Dylan.deKervor@hhs.gov>
Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care
Date: 2022/08/01 16:33:44
Priority: Normal
Type: Note

Updated version attached; I also made the tweak that Lauren had in track changes.
The info on the Florida Board of Medicine rule is on page 3, at the top of the "Current Status" section.
Happy to move it elsewhere if you'd prefer!

Best,
Vatsala

From: Kumar, Vatsala (HHS/OCR)
Sent: Monday, August 1, 2022 3:39 PM
To: de Kervor, Dylan (HHS/OCR) <Dylan.Dekervor@hhs.gov>
Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

No worries! Florida is doing a lot of things these days so I get it!
Yes, can do; I'll send it back your way shortly.

Best,
Vatsala

From: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Sent: Monday, August 1, 2022 3:36 PM
To: Kumar, Vatsala (HHS/OCR) <Vatsala.Kumar@hhs.gov>
Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Hi Vatsala,

Sorry about the snafu on Friday – apparently CMS thought we were talking about an immigration status EO that Florida issued last year!

Would you mind updating your memo to also mention the below:

> FL medical board to weigh blocking treatments for transgender youth
> *CBS News Miami, 08/01/2022*
> The FL Board of Medicine posted 1,113 documents related to gender-dysphoria treatment in preparation for their meeting. The state Department of Health filed a petition asking the board, which regulates medical doctors, to start a rulemaking process on the

proposal by Gov. Ron DeSantis' administration to bar physicians from providing treatments such as hormone therapy and puberty-blocking medication to transgender youths.

Thank you!
Dylan

Dylan Nicole de Kervor, Esq., MSW (she/her)
Phone: (b)(6)
Email: dylan.dekervor@hhs.gov

From: Kumar, Vatsala (HHS/OCR) <Vatsala.Kumar@hhs.gov>
Sent: Friday, July 22, 2022 2:58 PM
To: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Hi Dylan,

Please find attached a memo about the Florida proposed rule. While the document is pretty long, note that the memo itself is only the first six pages, and the rest is a rundown of the public hearing that was held.

This focuses primarily on public and written comments I was able to find and some of the major issues that have come up therein, but I'm keeping an eye on the news to see if there are any other developments.
Please let me know if I can do any follow-up on this today or next week!

Have a great weekend!

Best,
Vatsala

From: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Sent: Wednesday, July 20, 2022 11:15 AM
To: Kumar, Vatsala (HHS/OCR) <Vatsala.Kumar@hhs.gov>
Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Yup!

Dylan Nicole de Kervor, Esq., MSW (she/her)
Phone (b)(6)
Email: dylan.dekervor@hhs.gov

From: Kumar, Vatsala (HHS/OCR) <Vatsala.Kumar@hhs.gov>
Sent: Wednesday, July 20, 2022 11:14 AM

To: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Hi Dylan,

Yes! Can do. Is Friday an okay timeline for this?

Best,
Vatsala

From: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Sent: Wednesday, July 20, 2022 11:12 AM
To: Kumar, Vatsala (HHS/OCR) <Vatsala.Kumar@hhs.gov>
Subject: FW: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Hi Vatsala,

We are meeting with CMS to discuss the below FL proposed rule next week; are you able to do some research to find out the latest? Maybe there is a transcript or recording of the public hearing as well?

If you can draft up the information as a briefing memo for the Director, that would be great. I have attached a sample for format of the header, and for the body you can include the headers of Background, Current Status, and maybe next steps? Also if there is any information about organizations working in FL on the issue that would be good to know.

Once we have a time, I'll send you the invite.

Thank you!
Dylan

From: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Sent: Tuesday, June 21, 2022 9:32 AM
To: Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>; Jee, Lauren (HHS/OCR) <Lauren.Jee1@hhs.gov>; Katch, Hannah (CMS/OA) <Hannah.Katch@cms.hhs.gov>
Cc: Barron, Pamela (HHS/OCR) <Pamela.Barron@hhs.gov>
Subject: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Good morning all,

I am sure you have all seen the news, but I am flagging the State of Florida's proposed rule 59G-1.050, published in the Florida Administrative Record on Friday (6/17/2022), to prohibit Florida Medicaid coverage of the below services "for 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. Proposed 59G-1.050(7)(a). The proposed rule futher states that 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. Proposed 59G-1.050(7)(b). I have attached the notice here for ease of reference.

There is a public hearing scheduled for July 8, 2022 from 3:00 – 5:00 p.m. in Tallahassee, FL.

I'm not sure if calls are already happening on this, but since they implicate both CMS and OCR equities it seems like coordination would be beneficial.

Best,
Dylan

Dylan Nicole de Kervor, Esq., MSW (she/her) | Section Chief
Office for Civil Rights
U.S. Department of Health &Human Services
200 Independence Ave. S.W., Room 532E
Washington, D.C. 20201
Phone (b)(6)
Email: dylan.dekervor@hhs.gov

Please note I will be out of the office with no email access July 4 – 18, 2022.

Sender: Kumar, Vatsala (HHS/OCR) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FC510606A9034939AC2EB2C237DD8CF3-KUMAR, VATS <Vatsala.Kumar@hhs.gov>

Recipient: de Kervor, Dylan (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91-Dekervor, D <Dylan.deKervor@hhs.gov>

Sent Date: 2022/08/01 16:33:12

Delivered Date: 2022/08/01 16:33:44

DELIBERATIVE

DATE: July 22, 2022 (updated August 1, 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

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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). 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). 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). 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 universities[1] drafted a report reviewing the Florida Medicaid Report ("Critical Review"). *See* Meredithe McNamara et al., *A Critical Review of the June 2022 Florida Medicaid Report on the Medical Treatment of Gender Dysphoria* (July 8, 2022). The Critical Review states that the Florida Medicaid Report "purports to be a review of the scientific

[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 Southwestern, and University of Alabama at Birmingham. *See* Meredithe McNamara et al., *A Critical Review of the June 2022 Florida Medicaid Report on the Medical Treatment of Gender Dysphoria* (July 8, 2022).

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 Florida 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).

2. Current Status

While no further actions have yet been taken on the proposed rule, several other developments have ensued. First, the Florida Agency for Health Care Administration held a public hearing and accepted public comments on the proposed rule, both of which are discussed below and in the Appendix.

Additionally, the Florida Department of Health submitted a petition to the Florida Board of Medicine, urging them to bar physicians from providing gender-affirming care to minors. *See Florida Medical Board to Weigh Blocking Treatments for Transgender Youth*, CBS Miami (Aug. 1, 2022). The change would create a standard of care prohibiting individuals under the age of eighteen from receiving gender-affirming surgeries and hormones; it would also mandate a consent form and waiting period for older individuals. *Id.* The petition relied on guidance issued by the Florida Department of Health which stated that gender-affirming care should not be a treatment option for minors, Off. of State Surgeon Gen., Fla. Dep't of Health, Treatment of Gender Dysphoria for Children and Adolescents (Apr. 20, 2022), as well as the Florida Medicaid Report discussed *supra* Part 1-b. *Florida Medical Board to Weigh Blocking Treatments for Transgender Youth*, CBS Miami (Aug. 1, 2022). The next steps in this process are for the Board of Medicine to draft a proposed rule and take public comment. *Id.*

a. July 8, 2022 Hearing

The Florida Agency for Healtb 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).

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 Care*, Penn. Capital-Star (Sept. 15, 2020). 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., (last visited July 22, 2022). Dr. Van Mol is also a member. *Andre Van Mol*, Pub. Discourse, (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). 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. 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 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). 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). 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). 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). 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.*

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).

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).

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 lead 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

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[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.

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

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."

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

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 idealogues 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

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 sel[f] 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.

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

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."

A pastor from Florida spoke next on behalf of Protect Our Children Project, Duval Country 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." Sbe 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 bave a hysterectomy," which for teens could mean a potential hysterectomy before the age of twenty. She said tbat "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 witb 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.

"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

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).

From: Jee, Lauren (HHS/OCR) </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DC5A273E16824884903F0D2AFC8CB225-JEE, LAUREN>

To: de Kervor, Dylan (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91-Dekervor, D <Dylan.Dekervor@hhs.gov>

CC: Barron, Pamela (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d55f83440f074842ac94e1f27f11fa9e-Barron, Pam <Pamela.Barron@hhs.gov>;
Kumar, Vatsala (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fc510606a9034939ac2eb2c237dd8cf3-Kumar, Vats <Vatsala.Kumar@hhs.gov>;
Huggins, Michael (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9597596b8c4d4b8d9faf4922101a611b-Huggins, Mi <Michael.Huggins@hhs.gov>

Subject: RE: FOR FRIDAY - Background memo on Florida's General Medicaid Policy proposed rule (limiting gender affirming care)

Date: 2022/07/27 14:35:00

Priority: Normal

Type: Note

I had one nit. Would you like us to include in Melanie's briefing book?

From: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Sent: Wednesday, July 27, 2022 12:56 PM
To: Jee, Lauren (HHS/OCR) <Lauren.Jee1@hhs.gov>
Cc: Barron, Pamela (HHS/OCR) <Pamela.Barron@hhs.gov>; Kumar, Vatsala (HHS/OCR) <Vatsala.Kumar@hhs.gov>; Huggins, Michael (HHS/OCR) <Michael.Huggins@hhs.gov>
Subject: FOR FRIDAY - Background memo on Florida's General Medicaid Policy proposed rule (limiting gender affirming care)

Hi Lauren,

In anticipation of our call with CMS regarding proposed amendments to Florida's General Medicaid Policy to limit coverage of gender dysphoria treatment, I am sharing the attached informational memo for the Director prepared by Vatsala Kumar. The memo provides a summary of the rule and its current status. The memo itself is five pages, and the following 12 pages provide a summary of the July 8, 2022 public hearing on the proposed rule.

Please let us know if you have any questions.

Best,
Dylan

Dylan Nicole de Kervor, Esq., MSW (she/her) | Section Chief
Office for Civil Rights
U.S. Department of Health &Human Services
200 Independence Ave. S.W., Room 532E

Washington, D.C. 20201
Phone: (b)(6)
Email: dylan.dekervor@hhs.gov

Sender: Jee, Lauren (HHS/OCR) </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DC5A273E16824884903F0D2AFC8CB225-JEE, LAUREN>

Recipient: de Kervor, Dylan (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91-Dekervor, D <Dylan.Dekervor@hhs.gov>;
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Kumar, Vatsala (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fc510606a9034939ac2eb2c237dd8cf3-Kumar, Vats <Vatsala.Kumar@hhs.gov>;
Huggins, Michael (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9597596b8c4d4b8d9faf4922101a611b-Huggins, Mi <Michael.Huggins@hhs.gov>

Sent Date: 2022/07/27 14:35:38

Delivered Date: 2022/07/27 14:35:00

To: de Kervor, Dylan (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91-Dekervor, D <Dylan.Dekervor@hhs.gov>

Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Date: 2022/07/22 14:58:11

Priority: Normal

Type: Note

Hi Dylan,

Please find attached a memo about the Florida proposed rule. While the document is pretty long, note that the memo itself is only the first six pages, and the rest is a rundown of the public hearing that was held.

This focuses primarily on public and written comments I was able to find and some of the major issues that have come up therein, but I'm keeping an eye on the news to see if there are any other developments.
Please let me know if I can do any follow-up on this today or next week!

Have a great weekend!

Best,
Vatsala

From: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Sent: Wednesday, July 20, 2022 11:15 AM
To: Kumar, Vatsala (HHS/OCR) <Vatsala.Kumar@hhs.gov>
Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Yup!

Dylan Nicole de Kervor, Esq., MSW (she/her)
Phone: (b)(6)
Email: dylan.dekervor@hhs.gov

From: Kumar, Vatsala (HHS/OCR) <Vatsala.Kumar@hhs.gov>
Sent: Wednesday, July 20, 2022 11:14 AM
To: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Hi Dylan,

Yes! Can do. Is Friday an okay timeline for this?

Best,

Vatsala

From: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Sent: Wednesday, July 20, 2022 11:12 AM
To: Kumar, Vatsala (HHS/OCR) <Vatsala.Kumar@hhs.gov>
Subject: FW: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Hi Vatsala,

We are meeting with CMS to discuss the below FL proposed rule next week; are you able to do some research to find out the latest? Maybe there is a transcript or recording of the public hearing as well?

If you can draft up the information as a briefing memo for the Director, that would be great. I have attached a sample for format of the header, and for the body you can include the headers of Background, Current Status, and maybe next steps? Also if there is any information about organizations working in FL on the issue that would be good to know.

Once we have a time, I'll send you the invite.

Thank you!
Dylan

From: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Sent: Tuesday, June 21, 2022 9:32 AM
To: Rainer, Melanie Fontes (OS/IOS) <Melanie.Rainer@hhs.gov>; Jee, Lauren (HHS/OCR) <Lauren.Jee1@hhs.gov>; Katch, Hannah (CMS/OA) <Hannah.Katch@cms.hhs.gov>
Cc: Barron, Pamela (HHS/OCR) <Pamela.Barron@hhs.gov>
Subject: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Good morning all,

I am sure you have all seen the news, but I am flagging the State of Florida's proposed rule 59G-1.050, published in the Florida Administrative Record on Friday (6/17/2022), to prohibit Florida Medicaid coverage of the below services "for 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. Proposed 59G-1.050(7)(a). The proposed rule futher states that 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. Proposed 59G-1.050(7)(b). I have attached the notice here for ease of reference.

There is a public hearing scheduled for July 8, 2022 from 3:00 – 5:00 p.m. in Tallahassee, FL.

I'm not sure if calls are already happening on this, but since they implicate both CMS and OCR equities it seems like coordination would be beneficial.

Best,

Dylan

Dylan Nicole de Kervor, Esq., MSW (she/her) | Section Chief
Office for Civil Rights
U.S. Department of Health &Human Services
200 Independence Ave. S.W., Room 532E
Washington, D.C. 20201
Phone: (b)(6)
Email: dylan.dekervor@hhs.gov

Please note I will be out of the office with no email access July 4 – 18, 2022.

Recipient: de Kervor, Dylan (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91-Dekervor, D <Dylan.Dekervor@hhs.gov>

Sent Date: 2022/07/22 14:58:12

Delivered Date: 2022/07/22 14:58:11

Message Flags: Unread Unsent

ACA § 1557 CHALLENGES TO STATE MEDICAID BANS OF GENDER-AFFIRMING PROCEDURES
Prepared by: Vatsala Kumar, FCS Intern | July 23, 2021

I. INTRODUCTION

Medicaid is a federally- and state-funded program which provides health coverage for low-income individuals in the United States.[1] Medicaid is managed by each state individually, and while states are not required to participate in the program, all states currently do.[2] There are federal mandates for Medicaid programs, but states have flexibility in creating policies and criteria for their programs.[3]

One such federal requirement is § 1557 of the Affordable Care Act (ACA).[4] This section prohibits any "health program or activity" which receives "[f]ederal financial assistance" from discriminating against any individual on the basis of race, color, national origin, sex, age, or disability.[5]

Since at least 2010, some states have issued regulations and policies excluding gender-affirming procedures[6] from Medicaid coverage.[7] Several lawsuits have been filed challenging these exclusions, alleging that they violate § 1557.[8] This memorandum will discuss recently-resolved and currently-pending litigation surrounding these issues, focusing on six states: Wisconsin, West Virginia, Georgia, Arizona, New York, and Alaska.[9]

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[1] *See generally* Social Security Amendments of 1965 § 121(a), 42 U.S.C. § 1396; Centers for Medicare & Medicaid Servs., *Program History*, MEDICAID.GOV, https://www.medicaid.gov/about-us/program-history/index.html [https://perma.cc/87GA-73VP] (last visited July 16, 2021).

[2] *Id.*

[3] Centers for Medicare & Medicaid Servs., *Eligibility*, MEDICAID.GOV, https://www.medicaid.gov/medicaid/eligibility/index.html [https://perma.cc/PJ54-9DWQ] (last visited July 16, 2021).

[4] Patient Protection and Affordable Care Act § 1557, 42 U.S.C. § 18116 (2010); U.S. Dep't of Health & Human Servs., *Section 1557 of the Patient Protection and Affordable Care Act*, HHS.GOV, https://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html [https://perma.cc/MN6P-WVJK] (last visited July 16, 2021).

[5] Patient Protection and Affordable Care Act § 1557, 42 U.S.C. § 18116 (2010).

[6] This memorandum uses the phrase "gender-affirming procedures" to mean any procedures that are undertaken with the goal of aligning a transgender individual's physical characteristics with their gender. This can include (but is not limited to) facial surgery, genital surgery, breast augmentation surgery, mastectomies, hormone therapy, puberty blockers, and voice therapy. Cases sometimes refer to these procedures, among other names, as "gender confirmation surgery" or "sex reassignment surgery." *See* Madeline B. Deutsch, *Overview of Gender-Affirming Treatments and Procedures*, UCSF TRANSGENDER CARE (June 17, 2016), https://transcare.ucsf.edu/guidelines/overview [https://perma.cc/X9SB-NKKD]; *Gender Confirmation Procedures*, UCHICAGO MEDICINE, https://www.uchicagomedicine.org/conditions-services/plastic-reconstructive-surgery/gender-confirmation-surgery/procedures [https://perma.cc/WCP4-S7NU] (last visited July 16, 2021); *Gender Affirmation (Confirmation) or Sex Reassignment Surgery*, CLEVELAND CLINIC (May 3, 2021), https://my.clevelandclinic.org/health/treatments/21526-gender-affirmation-confirmation-or-sex-reassignment-surgery [https://perma.cc/4WQ3-EXCK].

[7] CHRISTY MALLORY & WILLIAM TENTINDO, UCLA SCHOOL OF LAW WILLIAMS INSTITUTE, MEDICAID COVERAGE FOR GENDER-AFFIRMING CARE 6–8 (Oct. 2019), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Medicaid-Gender-Care-Oct-2019.pdf [https://perma.cc/F954-7VXF]; *see also Healthcare Laws and Policies: Medicaid Coverage for Transition-Related Care*, MOVEMENT ADVANCEMENT PROJECT (last updated June 30, 2021), https://www.lgbtmap.org/img/maps/citations-medicaid.pdf [https://perma.cc/F9SX-7HRR].

[8] *See, e.g.*, *Flack v. Wis. Dep't of Health Servs.*, 395 F. Supp. 3d 1001 (W.D. Wis. 2019); *Fain v. W. Va. Dep't of Health & Hum. Res.*, No. 3:20-cv-00740, 2020 WL 6688918 (S.D. W. Va. Nov. 12, 2020); *Thomas v. Ga. Dep't of Cmnty. Health*, No. 1:21-cv-02558-cap (N.D. Ga. June 24, 2021); *Hennessy-Waller v. Snyder*, No. 20-00445-TUC-SHR, 2021 WL 1192842 (D. Az. Mar. 30, 2021), *appeal docketed sub nom. D.H. v. Snyder*, No. 21-15668 (9th Cir. Apr. 19, 2021); *Cruz v. Zucker*, 195 F. Supp. 3d 554 (S.D.N.Y. 2016); *Being v. Crum*, No. 3:19-cv-00060 (D. Alaska Mar. 3, 2019); *see also* discussion *infra* Part II.

[9] The Iowa Court of Appeals heard a suit challenging a similar Iowa rule which prohibited Medicaid coverage for gender-affirming surgery, but that case focused exclusively on violations of the Iowa Civil Rights Act and the Iowa

II. CHALLENGES TO STATE MEDICAID BANS

a. Wisconsin (*Flack v. Wisconsin Department of Health Services*)

Wisconsin Administrative Code §§ DHS 107.03(23)–(24) denied coverage for medically prescribed gender-affirming surgery and related hormonal treatments under Wisconsin Medicaid.[10] The exclusions applied only to beneficiaries who were twenty-one and older; different provisions governed youth beneficiaries.[11] The plaintiffs in *Flack v. Wisconsin Department of Health Services*[12]—four adult transgender named plaintiffs who had been denied coverage[13]—challenged this regulation on behalf of themselves and a class of similarly-situated plaintiffs, alleging *inter alia* that it violated § 1557 of the ACA.[14]

The *Flack* plaintiffs argued that these exclusions violated § 1557 because they discriminated on the basis of sex.[15] In response, the Department made a "Spending Clause" argument, claiming that "Wisconsin could not have understood that Title IX would impose on it a new anti-discrimination requirement when this federal law passed" because "the Seventh Circuit did not hold that sexual orientation and transgender status discrimination were covered under Title VII and Title IX, respectively, until decades after the enactment of Title IX."[16] The court rejected this argument—calling it "[n]onsense"[17]—and found that § 1557 provides a private right of action and that this exclusion does discriminate on the basis of sex.[18]

The court in *Flack* also reaffirmed the value of gender-affirming procedures in its opinion. The court said unequivocally that "any attempt . . . to contend that gender-confirming care—including surgery—is inappropriate, unsafe, and ineffective is unreasonable."[19]

b. West Virginia (*Fain v. Crouch*)

In their class action complaint, and represented by Lambda Legal Defense and Education Fund, the plaintiffs in *Fain v. Crouch*[20] likewise challenged state health plan exclusions as discriminatory against transgender people.[21] The challenged exclusions in *Fain* exclude gender-affirming care for transgender

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Equal Access to Justice Act and did not consider § 1557 violations. *Good v. Iowa Dep't of Hum. Servs.*, 940 N.W.2d 792 (Iowa Ct. App. 2019). This memorandum will not expound on *Good*.

[10] *Flack v. Wis. Dep't of Health Servs.*, 395 F. Supp. 3d 1001, 1007 (W.D. Wis. 2019); *see also* Wis. Admin. Code § DHS 107.03 (2000). The Code excluded "[d]rugs, including hormone therapy, associated with transsexual surgery or medically unnecessary alteration of sexual anatomy or characteristics" and "[t]ranssexual surgery." *Flack*, 395 F. Supp. 3d at 1007. While "[t]ranssexual surgery" is not defined in the regulations, DHS "interprets it to mean any surgical procedure intended to treat gender dysphoria." *Id.*; *see also id.* at 1009–10 (detailing the procedures which are excluded).

[11] *Id.* at 1010.

[12] 395 F. Supp. 3d 1001 (W.D. Wis. 2019).

[13] *Id.* at 1010–13. The named plaintiffs were denied coverage for chest reconstructive surgery, orchiectomy, vaginoplasty, electrolysis, penectomy, and breast augmentation. *Id.*

[14] Other claims included violations of the Medicaid Act's Availability Provision, the Medicaid Act's Comparability Provision, and the Equal Protection Clause of the Fourteenth Amendment. *Id.* at 1015–23. This memorandum will not explore these claims (or similar claims in other cases), but focuses only on § 1557 claims.

[15] *Id.* at 1014–15.

[16] *Id.* at 1014.

[17] *Id.* (citing Preliminary Injunction Opinion & Order at 30, *Flack v. Wis. Dep't of Health Servs.*, 395 F. Supp. 3d 1001 (W.D. Wis. 2019), ECF No. 70)

[18] *Id.* at 1014–15.

[19] *Id.* at 1018.

[20] No. 3:20-cv-00740 (S.D. W. Va. Nov. 12, 2020).

[21] *See* Class Action Complaint at ¶¶ 61–62, *Fain v. Crouch*, No. 3:20-cv-00740 (S.D. W. Va. Nov. 12, 2020).

individuals from Medicaid coverage, "even though the same treatments are covered for cisgender people who are Medicaid participants."[22] The plaintiffs, two transgender men who filed on behalf of themselves and a class, were denied coverage for hormone therapy and mastectomies.[23] The plaintiffs argued that the West Virginia exclusions "deprive transgender people of essential, and sometimes life-saving, health care," and that they violate the Equal Protection Clause of the Fourteenth Amendment, the Comparability and Availability requirements of the Medicaid Act, and § 1557.[24]

While no final opinion has yet been rendered in this case, the court has ruled twice on motions to dismiss,[25] and in those opinions has touched briefly on the § 1557 arguments. First, the defendants argued that this claim was barred under Eleventh Amendment immunity, which restricts the ability of individuals to file claims against states in federal court.[26] The plaintiff argued that § 1003 of the Civil Rights Remedies Equalization Act of 1986[27] "clearly and unambiguously conditioned federal Medicaid funding on states' waiver of immunity for nondiscrimination provisions."[28] This section says that states are not protected by the Eleventh Amendment when they violate "any . . . Federal statute prohibiting discrimination by recipients of Federal financial assistance."[29] The plaintiffs contended, and the court agreed, that that this clause incorporates § 1557.[30]

In ruling on the other motion to dismiss, the court again considered arguments against applying § 1557.[31] The defendants argued that the language "any health program or activity" within § 1557 was narrowed only to entities "principally engaged in the business of providing healthcare" by a 2020 rule, and thereby excluded health insurance issuers.[32] The plaintiffs argued that the 2020 rule does not control because § 1557 "unambiguously prohibits discrimination by [health insurance issuers] under its entire portfolio," and the court agreed.[33] The court found that, in context, "health program or activity" "necessarily includes health insurance issuers,"[34] and the use of the phrase "health program or activity" "does not mean that [Congress] intended to exclude entities from Section 1557" but rather that "Congress intended the provision to apply broadly."[35] The court denied the motion.[36]

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[22] *Id.* at ¶¶ 61–62.
[23] *Id.* at ¶¶ 68–105.
[24] *Id.* at ¶ 6.
[25] *See Fain v. Crouch*, 540 F. Supp. 3d 575 (S.D.W.Va. 2020) [hereinafter *Fain I*]; *Fain v. Crouch*, 545 F. Supp. 3d 338 (S.D.W.Va. 2021) [hereinafter *Fain II*].
[26] *Fain I*, 540 F. Supp. 3d at 581; *see also* U.S. CONST. amend. XI.
[27] 42 U.S.C. § 2000d-7(a)(1) ("A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal Court for a violation of section 504 of the Rehabilitation Act of 1973, title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, or the provisions of any other federal statute prohibiting discrimination by recipients of Federal financial assistance.").
[28] 42 U.S.C. § 2000d-7(a)(1); *Fain I*, 540 F. Supp. 3d at 581.
[29] 42 U.S.C. § 2000d-7(a)(1).
[30] *Fain I*, 540 F. Supp. 3d at 581 (citing *Kadel v. Folwell*, 446 F. Supp. 3d 1, 17 (M.D.N.C. 2020); *Boyden v. Conlin*, 341 F. Supp. 3d 979, 998 (W.D. Wis. 2018); *Esparza v. Univ. Med. Ctr. Mgmt. Corp.*, No. cv-17-4803, 2017 WL 4791185, at *9 (E.D. La. Oct. 24, 2017)). The court did note that "there is not yet controlling precedent" on this, but that "several district courts have held that the Residual Clause incorporates Section 1557." *Id.* at *3.
[31] *See generally Fain II*, 545 F. Supp. 3d 338 (S.D.W.Va. 2021).
[32] *Id.* at 340.
[33] *Id.* at 341.
[34] *Id.* at 342–43.
[35] *Id.*
[36] *Id.* at 343.

Later in 2021, Plaintiffs sought to file an Amended Complaint and add two additional plaintiffs to the filing.[37] The court granted this motion,[38] and no further orders have been reported.

c. Arizona (*Hennessy-Waller v. Snyder*)

In *Hennessy-Waller v. Snyder*,[39] plaintiffs were two minors challenging the Arizona Medicaid program, which excluded numerous procedures.[40] The plaintiffs also sought class certification in their complaint.[41] The plaintiffs' healthcare providers recommended testosterone and male chest reconstruction surgery, both of which were excluded under the Arizona rule.[42] The plaintiffs challenged these exclusions under Equal Protection, Title XIX of the Social Security Act, and ACA § 1557.[43]

The court considered the plaintiffs' Equal Protection Clause argument alongside their § 1557 argument.[44] The court declined to read *Bostock v. Clayton County*[45] as extending to Medicaid plans, and distinguished other cases on similar grounds.[46] The court also distinguished this case from *Flack*, finding that since the exclusion here "only excludes gender reassignment *surgery*—it does not exclude coverage for other treatments for gender dysphoria such as hormone therapy," and because the exclusion in *Flack* "involved *adult* plaintiffs—not minors such as the plaintiffs here," the cases were distinct.[47] Finally, the court held that although the plaintiffs "would be denied coverage for the surgery" under the challenged exclusion, "they have not clearly shown that such a denial would be made on the basis of sex."[48] The court said that the plaintiffs "have not clearly shown the surgery they seek is medically necessary for them, that it is a safe and effective treatment for gender dysphoria in adolescents," or that the Arizona exclusions violate § 1557, the Medicaid Act, or the Equal Protection Clause.[49] After additionally noting that "irreparably harm is unlikely," the court denied the preliminary injunction,[50] and the plaintiffs appealed.[51] The circuit court affirmed the district court's denial of preliminary injunction, finding that plaintiffs had "not made a compelling showing of irreparable harm" or met the burden of showing that the district court's denial was unreasonable or unsupported by the record.[52]

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[37] *See Fain v. Crouch*, No. 20-0740, 2021 WL 5024357 (S.D. W.Va. Oct. 28, 2021).
[38] *Id.*
[39] No. 20-00445-TUC-SHR, 2021 WL 1192842 (D. Az. Mar. 30, 2021), *appeal docketed sub nom. D.H. v. Snyder*, No. 21-15668 (9th Cir. Apr. 19, 2021).
[40] *See id.* at *1.
[41] *Id.*
[42] *Id.* The Arizona Medicaid exclusions include "[i]nfertility services," "gender reassignment surgeries," "[p]regnancy termination counseling services," "[p]regnancy terminations," "[s]ervices or items furnished solely for cosmetic purposes," and "[h]ysterectomies unless determined medically necessary." *Id.* (citing Ariz. Admin. Code R9-22-205(B)(4)).
[43] *Id.*
[44] *Id.* at *7.
[45] 140 S. Ct. 1731 (2020).
[46] *Hennessy-Waller*, 2021 WL 1192842, at *8.
[47] *Id.*
[48] *Id.* at *9.
[49] *Id.* at *3.
[50] *Id.* at *10.
[51] *See D.H. v. Snyder*, No. 21-15668 (9th Cir. Apr. 19, 2021).
[52] *Doe v. Snyder*, 28 F. 4th 103 (9th Cir. 2022).

d. New York (*Cruz v. Zucker*)

The plaintiffs in *Cruz v. Zucker*[53]—three adult transgender named plaintiffs, filing on behalf of themselves and similarly-situated individuals—challenged a New York rule which barred payment for all "care, services, drugs or supplies rendered for the purposes of gender reassignment."[54] An amendment to this rule allowed hormone therapy and some gender-affirmation surgery for certain Medicaid recipients, but still excluded coverage for "cosmetic surgery, services, and procedures," defined as "anything solely directed at improving an individual's appearance."[55] The amendment also still denied coverage for youth.[56] The plaintiffs challenged this amended rule under the Availability and Comparability Requirements of the Medicaid Act, the "Reasonable Standards Requirement" of the Medicaid Act, the New York Constitution's equal protection provision, and ACA § 1557.[57]

The defendant moved to dismiss the complaint, arguing in part that the plaintiffs failed to state a claim for § 1557.[58] The defendant argued that, since the amended rule "draws distinctions on the basis of age, not sex," it therefore does not violate § 1557.[59] The plaintiffs argued in response that (1) the rule still denies services to transgender people which are granted to non-transgender people, and (2) the coverage exclusions still have a disparate impact on transgender individuals.[60] The court held that the "plaintiffs fail[ed] to allege any facts in support of either theory" and granted the motion to dismiss this count.[61] In a footnote, the court noted that "[i]t is not settled whether a disparate impact claim is cognizable under Section 1557 of the ACA."[62]

e. Alaska (*Being v. Crum*)

The Alaska Administrative Code denied Medicaid coverage for "treatment, therapy, surgery, or other procedures related to gender reassignment."[63] The plaintiffs in *Being v. Crum*[64] were three transgender adults filing on behalf of themselves and similarly-situated plaintiffs, and they were represented by Lambda Legal Defense and Education Fund.[65] The plaintiffs challenged this exclusion under, *inter alia*, ACA § 1557.[66] The plaintiffs argued that "[d]iscrimination on the basis of gender identity and/or reliance on sex stereotyping constitute discrimination on the basis of sex" under § 1557, and that by accepting federal financial assistance the defendant was subject to § 1557.[67]

The court did not decide on the merits of this challenge. Shortly after the plaintiffs filed their amended complaint, the defendants issued a Notice of Proposed Rulemaking that would amend the

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[53] 116 F. Supp. 3d 334 (S.D.N.Y. 2015).
[54] *Id.* at 338.
[55] *Id.*
[56] *Id.* ("[I]t did not provide coverage for hormone therapy or gender reassignment surgery for individuals under the age of eighteen, or for gender reassignment surgery for individuals under the age of twenty-one where such surgery would result in sterilization . . . .").
[57] *Id.* at 339.
[58] *Id.* at 347–48.
[59] *Id.* at 348.
[60] *Id.*
[61] *Id.*
[62] *Id.* at 348 n.8 (citing *Rumble v. Fairview Health Servs.*, No. 14-cv-2037, 2015 WL 1197415, at *12 (D. Minn. Mar. 16, 2015)).
[63] Alaska Admin. Code 105.110(12).
[64] No. 3:19-cv-00060 (D. Alaska 2019).
[65] First Amended Class Action Complaint at ¶ 1, *Being v. Crum*, No. 3:19-cv-00060 (D. Alaska Jan. 8, 2020).
[66] *Id.* at ¶ 4.
[67] *Id.* at ¶¶ 66–71.

exclusions to "[a]llow Medicaid coverage for non-surgical services related to gender reassignment," but would still exclude coverage for "gender reassignment surgeries, including secondary surgeries."[68] In exchange for the defendants agreeing to eliminate these exclusions, the plaintiffs dismissed the case.[69]

f. Georgia (*Thomas v. Georgia Department of Community Health*)

The Georgia exclusion at issue in *Thomas v. Georgia Department of Community Health*[70] categorically prohibits gender-affirming surgeries (which the exclusion labels as "[t]ranssexual surgery") from Medicaid coverage, regardless of medical necessity.[71] The plaintiffs are two transgender women and a proposed class, represented by the American Civil Liberties Union (ACLU), and they likewise brought a slate of claims, including one under ACA § 1557.[72] In their amended answer to the complaint, the defendants admit that they receive federal funds, but argue that "Section 1557 speaks for itself" and that "[n]o response is required of [them]."[73]

In April 2022, the parties agreed to settle,[74] and the settlement agreement was filed with the court on June 27, 2022.[75] Georgia agreed to (a) remove the challenged exclusion from their state Medicaid plan and policies, (b) adopt the Alliant Health Solutions Gender Reassignment Review Guidelines for the treatment of gender dysphoria, and (c) pay a settlement amount of $350,000.[76]

The Alliant Health Solutions Gender Reassignment Review Guidelines do not appear to be readily available online or attached to the settlement agreement filed with the court.[77] An ACLU press release states that Georgia agreed to "provide the care when it is medically necessary for the individual" and "adopt benefits and clinical guidelines for the treatment of gender dysphoria, including benefits for gender-affirming surgical care."[78] No further detail on the guidelines seems to be available.

III. CONCLUSION

A plurality of states have chosen to specifically include coverage for gender-affirming procedures in their Medicaid programs,[79] and a number of others are silent on the issue.[80] As explored in this

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[68] Stipulated Settlement Agreement and Order at ¶ 5, *Being v. Crum*, No. 3:19-cv-00060 (D. Alaska Dec. 22, 2020).
[69] *Id.* at ¶¶ 6–7.
[70] No. 1:21-cv-02558 (N.D. Ga. June 24, 2021).
[71] Class Action Complaint at ¶ 1, *Thomas v. Georgia Dep't of Cmnty. Health*, No. 1:21-cv-02558 (N.D. Ga. June 24, 2021).
[72] *See id.* at ¶¶ 101–109.
[73] Amended Answer and Defenses at ¶¶ 11, 101–109, *Thomas v. Georgia Dep't of Cmnty. Health*, No. 1:21-cv-02558 (N.D. Ga. July 16, 2021).
[74] Order, *Thomas v. Georgia Dep't of Cmnty. Health*, No. 21-02558 (N.D. Ga. Apr. 27, 2022).
[75] Joint Status Report, ex. A, *Thomas v. Georgia Dep't of Cmnty Health*, No. 21-02558 (N.D. Ga. June 27, 2022).
[76] *Id.* at ¶¶ 1–4.
[77] *See id.*
[78] Am. Civil Liberties Union, Press Release, ACLU of Georgia Announces Settlement with Georgia to Include Gender-Affirming Surgery in State's Medicaid Program (July 18, 2022), https://acluga.org/aclu-of-georgia-announces-settlement-with-georgia-to-include-gender-affirmingsurgery-in-states-medicaid-program/.
[79] *Healthcare Laws*, *supra* note 7 (noting that the Medicaid programs in twenty-three states—Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and Wisconsin—and the District of Columbia all explicitly cover transgender-related health coverage and care); *see also* MALLORY & TENTINDO, *supra* note 7, at 2–5.
[80] *Healthcare Laws*, *supra* note 7 (noting that eighteen states—Alabama, Florida, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, North Dakota, Oklahoma, South Carolina, South

memorandum, however, plenty of states have expressly declined to provide coverage for these procedures.[81] Additionally, this memorandum only touches on challenges that have been brought thus far; at least six additional states have bans in place which have not yet been challenged.[82] Even in states where coverage is provided, "[i]nsurers will often deny claims as a result of confusion surrounding the medical necessity of different procedures," and "[s]ome Medicaid insurers set reimbursement rates for gender affirmation surgeries so low that it's not financially viable for a hospital or surgeon to offer them."[83] There are also very few surgeons in the country who are capable of performing numerous different procedures, and Medicaid often will not pay for procedures in another state.[84]

Based on the suits discussed in this memorandum, it is clear that courts are divided on how to understand ACA § 1557 within the realm of state Medicaid bans of gender-affirming care. Some courts have unequivocally held that these types of bans are discrimination on the basis of sex,[85] but most have yet to fully explore the § 1557 question.[86] As the barriers to gender-affirming procedures and health care continue to grow,[87] it is critical that all transgender people, including those who rely on Medicaid, receive the procedures they need.

Dakota, Utah, Virginia, and West Virginia—all have no explicit policy regarding transgender-related health coverage and care); *see also* MALLORY & TENTINDO, *supra* note 7, at 6.

[81] *Healthcare Laws*, *supra* note 7 (detailing the nine states—Arizona, Arkansas, Georgia, Missouri, Nebraska, Ohio, Tennessee, Texas, and Wyoming—which all explicitly exclude transgender-related care from their Medicaid coverage); *see also* MALLORY & TENTINDO, *supra* note 7, at 6–8.

[82] No suits have been filed challenging these Medicaid exclusions in Missouri, Nebraska, Ohio, Tennessee, Texas, or Wyoming. A Westlaw "Citing References" search under ACA § 1557 (42 U.S.C. § 18166) returned seven cases in these jurisdictions, none of which discuss transgender coverage or challenge bans thereof. *See Orders v. State Teachers Retirement System of Ohio*, 2016-Ohio-3345 (denial of erectile dysfunction medication and penile implantation surgery); *Gooden v. Batz*, No. 3:18-cv-302, 2021 WL 23899727 (S.D. Ohio June 10, 2021) (alleging that ACA § 1557 supports a "right to life-sustaining treatment"); *Tokmenko v. MetroHealthSystem*, 488 F. Supp. 3d 571 (N.D. Ohio Sep. 21, 2020) (discrimination against deaf individual); *Ohio Nurses Ass'n v. Ashtabula Cty. Med. Ctr.*, No. 1:20-cv-1656, 2020 WL 4390524 (N.D. Ohio July 31, 2020) (discrimination on the basis of sex against pregnant women); *Galuten v. Williamson Med. Ctr.*, No. 3:18-cv-00519, 2019 WL 1546940 (M.D. Tenn. Apr. 9, 2019) (age discrimination); *Lorshbaugh v. Cmnty. Health Systems*, No. 3:18-cv-394, 2019 WL 355529 (E.D. Tenn. Jan. 29, 2019) (discrimination against deaf individual); *Doe v. BlueCross BlueShield of Tenn.*, No. 2:17-cv-02793, 2018 WL 3625012 (W.D. Tenn. July 30, 2018) (discrimination on HIV/AIDS status).

[83] Sam McQuillan, *Transgender Medicaid Patients Face Coverage Barriers Despite Law*, BLOOMBERG LAW (Sep. 10, 2019), https://news.bloomberglaw.com/health-law-and-business/transgender-medicaid-patients-face-coverage-barriers-despite-law [https://perma.cc/FB86-5PRH].

[84] *Id.*

[85] *See Flack v. Wisconsin Dep't of Health Servs.*, 395 F. Supp. 3d 1001 (W.D. Wis. 2019) (holding that § 1557 provides a private right of action and that the Medicaid exclusion does discriminate on the basis of sex). *But see Hennessy-Waller v. Snyder*, No. 20-00445-TUC-SHR, 2021 WL 1192842 (D. Az. Mar. 30, 2021), *appeal docketed sub nom. D.H. v. Snyder*, No. 21-15668 (9th Cir. Apr. 19, 2021) (distinguishing *Flack* on narrower surgery exclusion and application to youths; declining to extend *Bostock* to reach Medicaid).

[86] *See Fain v. Crouch*, No. 3:20-cv-00740 (S.D.W. Va. Nov. 12, 2020) (allowing the § 1557 claim to proceed); *Cruz v. Zucker*, 116 F. Supp. 3d 334 (S.D.N.Y. 2015) (dismissing the count for failure to state supporting facts); *Being v. Crum*, No. 3:19-cv-00060 (D. Alaska 2019) (settled prior to reaching the merits); *Thomas v. Georgia Dep't of Cmnty. Health*, No. 1:21-cv-02558 (N.D. Ga. June 24, 2021) (still in the early stages of litigation).

[87] *See, e.g.*, Katie Kindelan, *What It's Really Like as a Transgender Person to Get Medical Care*, GOOD MORNING AMERICA (June 28, 2021), https://www.goodmorningamerica.com/wellness/story/transgender-person-medical-care-78433509 [https://perma.cc/BHY2-RDTX]; Meredith Deliso, *'Catastrophic' Number of State Bills Target Transgender Youth, Advocates Say*, ABC NEWS (Mar. 7, 2021), https://abcnews.go.com/US/catastrophic-number-state-bills-target-transgender-youth-advocates/story?id=76138305 [https://perma.cc/TDE5-L9QU]; *Legislative Tracker: Anti-Transgender Legislation*, FREEDOM FOR ALL AMERICANS,

https://freedomforallamericans.org/legislative-tracker/anti-transgender-legislation/ [https://perma.cc/T9TA-TGWH] (last visited July 22, 2021).

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Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care
Date: 2022/08/10 15:24:00
Priority: Normal
Type: Note

Hi Dylan,

I'd requested a transcript of the hearing on the Florida rule back when I first started drafting the memo, and I just finally received that. There shouldn't be much in here that isn't in my original appendix, but I'm attaching it anyway in case it's useful for us or CMS.

See you soon!

Vatsala

From: Kumar, Vatsala (HHS/OCR)
Sent: Friday, August 5, 2022 12:44 PM
To: de Kervor, Dylan (HHS/OCR) <Dylan.Dekervor@hhs.gov>
Subject: RE: FL proposed rule - banning FL Medicaid coverage of gender-affirming care

Hi Dylan,

Sorry for the delay on getting this back to you! As you'll see, I ended up going a little past just the article and including some other critiques about authors/works that were cited in the report. I also want to flag that many of these authors/works were cited in the comments to the 2019 NPRM that I reviewed earlier this summer.

Please let me know if I can do anything further on this! It's definitely not comprehensive (I didn't go through everything they cited), but focuses just on some of the bigger/more obvious issues. I'm happy to do a deeper dive if that would be useful.

Have a good weekend!

Best,
Vatsala

From: Kumar, Vatsala (HHS/OCR)
Sent: Wednesday, August 3, 2022 3:01 PM
To: de Kervor, Dylan (HHS/OCR) <Dylan.Dekervor@hhs.gov>
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Yes, can do! I'll get you this (and the updated Medicaid denials memo) tomorrow by EOD.
Have a safe flight!

Best,
Vatsala

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Thank you! I sent this to myself to read also!

Can you actually summarize this in a separate document? I am sure other folks are misrepresenting the research, and it could be helpful to have as a stand alone (I'm thinking it might help our former FCS colleagues working on the Alabama litigation, in particular).

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Hi Dylan,

Vice published this article today where 10 authors of studies cited in the Florida Medicaid Report said that their work was distorted, misrepresented, etc.

(b)(5)

Thanks!

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Sent Date: 2022/08/10 15:24:50

Delivered Date: 2022/08/10 15:24:00

From: Jee, Lauren (HHS/OCR) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DC5A273E16824884903F0D2AFC8CB225-JEE, LAUREN <Lauren.Jee1@hhs.gov>

To: de Kervor, Dylan (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91-Dekervor, D <Dylan.deKervor@hhs.gov>

CC: Barron, Pamela (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d55f83440f074842ac94e1f27f11fa9e-Barron, Pam <Pamela.Barron@hhs.gov>;
Kumar, Vatsala (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fc510606a9034939ac2eb2c237dd8cf3-Kumar, Vats <Vatsala.Kumar@hhs.gov>;
Huggins, Michael (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9597596b8c4d4b8d9faf4922101a611b-Huggins, Mi <Michael.Huggins@hhs.gov>

Subject: RE: FOR FRIDAY - Background memo on Florida's General Medicaid Policy proposed rule (limiting gender affirming care)

Date: 2022/07/27 14:36:07

Priority: Normal

Type: Note

I had one nit. Would you like us to include in Melanie's briefing book?

From: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Sent: Wednesday, July 27, 2022 12:56 PM
To: Jee, Lauren (HHS/OCR) <Lauren.Jee1@hhs.gov>
Cc: Barron, Pamela (HHS/OCR) <Pamela.Barron@hhs.gov>; Kumar, Vatsala (HHS/OCR) <Vatsala.Kumar@hhs.gov>; Huggins, Michael (HHS/OCR) <Michael.Huggins@hhs.gov>
Subject: FOR FRIDAY - Background memo on Florida's General Medicaid Policy proposed rule (limiting gender affirming care)

Hi Lauren,

In anticipation of our call with CMS regarding proposed amendments to Florida's General Medicaid Policy to limit coverage of gender dysphoria treatment, I am sharing the attached informational memo for the Director prepared by Vatsala Kumar. The memo provides a summary of the rule and its current status. The memo itself is five pages, and the following 12 pages provide a summary of the July 8, 2022 public hearing on the proposed rule.

Please let us know if you have any questions.

Best,
Dylan

Dylan Nicole de Kervor, Esq., MSW (she/her) | Section Chief
Office for Civil Rights
U.S. Department of Health &Human Services

200 Independence Ave. S.W., Room 532E
Washington, D.C. 20201
Phone: (b)(6)
Email: dylan.dekervor@hhs.gov

Sender: Jee, Lauren (HHS/OCR) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DC5A273E16824884903F0D2AFC8CB225-JEE, LAUREN <Lauren.Jee1@hhs.gov>

Recipient: de Kervor, Dylan (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91-Dekervor, D <Dylan.deKervor@hhs.gov>;
Barron, Pamela (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d55f83440f074842ac94e1f27f11fa9e-Barron, Pam <Pamela.Barron@hhs.gov>;
Kumar, Vatsala (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fc510606a9034939ac2eb2c237dd8cf3-Kumar, Vats <Vatsala.Kumar@hhs.gov>;
Huggins, Michael (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9597596b8c4d4b8d9faf4922101a611b-Huggins, Mi <Michael.Huggins@hhs.gov>

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
Tallahassee Division

AUGUST DEKKER, legally known as KORI DEKKER; BRIT ROTHSTEIN; SUSAN DOE, a minor, by and through her parents and next friends, JANE DOE and JOHN DOE; and K.F., a minor, by and through his parent and next friend, JADE LADUE, *Plaintiffs*, v. SIMONE MARSTILLER, in her official capacity as Secretary of the Florida Agency for Health Care Administration; and FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION, *Defendants*.	Civil Action No. **COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER RELIEF**

Plaintiffs AUGUST DEKKER, legally known as KORI DEKKER;[1] BRIT ROTHSTEIN; SUSAN DOE, a minor, by and through her parents and next friends, JANE DOE and JOHN DOE;[2] and K.F., a minor, by and through his parent and next

[1] Although Plaintiff's legal name is Kori Dekker, he is known by and uses the name August Dekker in accordance with his male gender identity. Accordingly, this Complaint refers to Plaintiff as August and uses male pronouns to refer to him.

[2] As set forth in the motion to proceed pseudonymously, Plaintiff Susan Doe, and her parents and next friends, Jane Doe and John Doe, seek to proceed pseudonymously in order to protect Susan Doe's right to privacy given that she is a

friend JADE LADUE,[3] by and through the undersigned counsel, bring this lawsuit against Defendants SIMONE MARSTILLER, in her official capacity as Secretary of the Florida Agency for Health Care Administration, and the FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION ("AHCA") to challenge the adoption of a rule, Florida Administrative Code 59G-1.050(7), prohibiting Medicaid coverage of services for the treatment of gender dysphoria and to seek declaratory and injunctive relief.

INTRODUCTION

1. A person's access to health care should not be contingent on their sex, gender identity, or whether they are transgender. Yet, that is exactly the situation in Florida. AHCA has made access to medically necessary health care for Medicaid beneficiaries contingent on whether they are transgender.

2. Empirical evidence and decades of clinical experience demonstrate that medical care for the treatment of gender dysphoria, also known as gender-affirming care, is medically necessary, safe, and effective for both transgender adolescents and adults with gender dysphoria. Gender-affirming care is neither experimental nor

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minor and the disclosure of her identity "would reveal matters of a highly sensitive and personal nature, specifically [Susan Doe]'s transgender status and [her] diagnosed medical condition—gender dysphoria." *Foster v. Andersen*, No. 18-2552-DDC-KGG, 2019 WL 329548, at *2 (D. Kan. Jan. 25, 2019).

[3] Because he is a minor, Plaintiff K.F. is proceeding under his initials pursuant to Federal Rule of Civil Procedure 5.2(a).

investigational; it is the prevailing standard of care, accepted and supported by every major medical organization in the United States.

3. Under newly adopted Rule 59G-1.050(7) of the Florida Administrative Code (the "Challenged Exclusion"), transgender Medicaid beneficiaries are denied coverage for gender-affirming care to treat gender dysphoria, without regard to the actual generally accepted professional medical standards that govern such care or the particular medical needs of any Medicaid beneficiary. Specifically, any health care service that "alter[s] primary or secondary sexual characteristics" is ineligible for Medicaid coverage, though only when that service is being used to treat gender dysphoria. These same health care services, however, are routinely covered by Medicaid when they are for medically necessary purposes other than the treatment of gender dysphoria.

4. The Challenged Exclusion represents dangerous governmental action that threatens the health and wellbeing of transgender Medicaid beneficiaries.

5. The purpose of Medicaid is to provide health care coverage to individuals who have low income and cannot otherwise afford the costs of necessary medical care. By denying coverage for gender-affirming care, Defendants effectively *categorically* deny access to medically necessary care to thousands of Floridians who lack other means to pay for such care.

6. Defendants' actions not only come within the context of a series of measures the State has adopted targeting transgender people for discrimination, but they stand in sharp contrast not just to the well-established evidence and widely accepted view of the medical and scientific community in the United States, but also to the policies of the vast majority of states, which provide Medicaid coverage for gender-affirming care.

7. If allowed to remain in effect, the Challenged Exclusion will have immediate dire physical, emotional, and psychological consequences for transgender Medicaid beneficiaries.

8. These consequences need not occur, however, as the Challenged Exclusion is unlawful in multiple respects and therefore should be preliminarily and permanently enjoined.[4]

9. First, the Challenged Exclusion, which Defendant Marstiller enforces, violates the United States Constitution's guarantee of equal protection of the laws. Under the Fourteenth Amendment's Equal Protection Clause, Defendants are prohibited from discriminating against persons based on sex and transgender status.

[4] Blanket bans like the Challenged Exclusion have been repeatedly found to be unlawful and unconstitutional forms of discrimination. *See, e.g.*, *Fain v. Crouch*, 3:20-cv-00740, Dkt. #271 (S.D.W.V. Aug. 2, 2022) (granting summary judgment in favor of plaintiffs on causes of action also brought in this Complaint); *Flack v. Wis. Dep't. of Health Services*, 3:18-cv-00309-wmc, Dkt. #217 (W.D. Wis. Aug. 16, 2019) (same).

10. Second, the Challenged Exclusion violates Section 1557 of the Patient Protection and Affordable Care Act (the "ACA"), 42 U.S.C. § 18116, which prohibits discrimination on the basis of sex by health programs or activities, any part of which receives federal funding, such as Medicaid.

11. Third, the Challenged Exclusion violates the Medicaid Act's Early and Periodic Screening, Diagnostic, and Treatment provisions, which require Defendants to affirmatively arrange for services that are necessary to "correct or ameliorate" a health condition for Medicaid beneficiaries under 21 years of age, 42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(43)(C), 1396d(a)(4)(B), and 1396d(r) ("EPSDT Requirements"), as well as the Medicaid Act's requirement for Defendants to ensure comparable coverage to every Medicaid beneficiary, 42 U.S.C. § 1396a(a)(10)(B)(i) ("Comparability Requirements").

12. Accordingly, Plaintiffs seek relief related to Defendants' adoption and enforcement of the Challenged Exclusion, including declaratory and preliminary and permanent injunctive relief, as well as compensatory damages, attorney's fees, and costs.

PARTIES

A. Plaintiffs

Plaintiff August Dekker

13. Plaintiff August Dekker is a 28-year-old transgender man. August, who has been diagnosed with gender dysphoria, is enrolled in and receives his health eare coverage through Florida's Medicaid program. At the recommendation of his health care providers, August receives medically necessary hormone therapy to treat his gender dysphoria, which Florida's Medicaid program has covered until now. August has been enrolled in Medieaid at all times relevant to this complaint. August lives in Hernando County, Florida.

Plaintiff Brit Rothstein

14. Plaintiff Brit Rothstein is a 20-year-old transgender man. Brit, who has been diagnosed with gender dysphoria, is enrolled in and receives his health care coverage through Florida's Medicaid program. At the recommendation of his health care providers, Brit receives medically necessary hormone therapy to treat his gender dysphoria, which Florida's Medicaid program has covered until now, and is scheduled to obtain chest surgery as treatment for his gender dysphoria in December 2022, which Medicaid had pre-authorized. Brit has been enrolled in Medicaid at all times relevant to this complaint. As he is college student, Brit lives in Orange

County, Florida while he is in school, and lives in Broward County, Florida, along with his family, when he is out of school.

Plaintiff Susan Doe

15. Plaintiff Susan Doe is a 12-year-old transgender adolescent girl. Susan Doe sues pursuant to Federal Rule of Civil Procedure 17(c) by and through her next friends and parents, Jane Doe and John Doe. Susan, who has been diagnosed with gender dysphoria, is enrolled in and receives her health care coverage through Florida's Medicaid program. At the recommendation of her health care providers, Susan receives medically necessary puberty delaying medication to treat her gender dysphoria, which Florida's Medicaid program has covered until now. Susan has been enrolled in Medicaid at all times relevant to this complaint. Susan, Jane, and John live in Brevard County, Florida.

Plaintiff K.F.

16. Plaintiff K.F. is a 12-year-old transgender adolescent boy. K.F. sues pursuant to Federal Rule of Civil Procedure 17(c) by and through his next friend and parent, Jade Ladue. K.F., who has been diagnosed with gender dysphoria, is enrolled in and receives his health care coverage through Florida's Medicaid program. At the recommendation of his health care providers, K.F. receives medically necessary puberty delaying medication to treat his gender dysphoria, which Florida's Medicaid

program has covered until now. K.F. has been enrolled in Medicaid at all times relevant to this complaint. Jade and K.F. live in Sarasota County, Florida.

B. Defendants

17. Defendant Simone Marstiller is sued in her official capacity as Secretary of AHCA, the "single state agency authorized to manage, operate, and make payments for medical assistance and related services under Title XIX of the Social Security Act [Medicaid]." Fla. Stat. §§ 409.902, 409.963 (2022); *see also* 42 U.S.C. § 1396a(a)(5); 42 C.F.R. § 431.10. Defendant Marstiller is responsible for the enforcement of the Challenged Exclusion. Defendant Marstiller is responsible for ensuring that the operation of Florida's Medicaid program complies with the United States Constitution and the Medicaid Act and its implementing regulations. Defendant Marstiller's official place of business is located in Tallahassee, Leon County, Florida.

18. Defendant AHCA is the "single state agency authorized to manage, operate, and make payments for medical assistance and related services under Title XIX of the Social Security Act [Medicaid]." Fla. Stat. §§ 409.902, 409.963 (2022). As such, AHCA receives federal funding to support the Florida Medicaid Program. AHCA uses the funds it receives from the federal government in part to cover health care services for persons enrolled in the Florida Medicaid Program. Moreover, AHCA oversees the promulgation of all Medicaid rules, fee schedules, and coverage

policies into the Florida Administrative Code. Fla. Stat. § 409.919 (2022). Defendant AHCA is based and headquartered in Tallahassee, Leon County, Florida.

JURISDICTION AND VENUE

19. The Court has jurisdiction over the claims asserted herein pursuant to 28 U.S.C. §§ 1331, 1343(a)(3)-(4).

20. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201, 2202, 42 U.S.C. § 1983, and Rules 57 and 65 of the Federal Rules of Civil Procedure.

21. Under 28 U.S.C. § 1391(b), venue is proper in the U.S. District Court for the Northern District of Florida because all Defendants reside within this District and a substantial part of the events or omissions giving rise to the claims alleged herein occurred in this District. Venue is proper in the Tallahassee Division of the Northern District of Florida under N.D. Fla. Loc. R. 3.1(B) because it is where the Defendants reside and where a substantial portion of the acts or omissions complained of herein occurred.

22. This Court has personal jurisdiction over Defendants because they are domiciled in Florida and/or have otherwise made and established contacts with Florida sufficient to permit the exercise of personal jurisdiction over them.

FACTUAL BACKGROUND

A. Gender Identity and Gender Dysphoria

23. A person's sex is multifaceted, and comprised of a number of characteristics, including but not limited to chromosomal makeup, hormones, internal and external reproductive organs, secondary sex characteristics, and most importantly, gender identity.

24. Gender identity is a person's internal sense of their sex. It is an essential element of human identity that everyone possesses, and a well-established concept in medicine. Gender identity is innate; immutable; has significant biological underpinnings, such as the sex differentiation of the brain that takes place during prenatal development; and cannot be altered.

25. Gender identity is the most important determinant of a person's sex. Everyone has a gender identity.

26. A person's sex is generally assigned at birth based solely on a visual assessment of external genitalia. External genitalia, however, are only one of several sex-related characteristics that comprise a person's sex, and as a result, are not always indicative of a person's sex.

27. For most people, their sex-related characteristics are aligned, and the visual assessment performed at birth serves as an accurate proxy for that person's sex.

28. The term "sex assigned at birth" is the most precise terms to use because not all of the physiological aspects of a person's sex are always in alignment with each other as typically male or typically female.

29. For these reasons, the Endocrine Society, an international medical organization of over 18,000 endocrinology researchers and clinicians, warns practitioners that the terms "biological sex" and "biological male or female" are imprecise and should be avoided.[5]

30. When a person's gender identity does not match that person's sex assigned at birth, gender identity is the critical determinant of that person's sex.

31. Individuals whose sex assigned at birth aligns with their gender identity are referred to as cisgender. Transgender people, on the other hand, have a gender identity that differs from the sex assigned to them at birth. A transgender boy or man is someone who was assigned a female sex at birth but has a male gender identity. A transgender girl or woman is someone who was assigned a male sex at birth but has a female gender identity.

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[5] *See* Wylie C. Hembree, *et al.*, *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society* Clinical Practice Guideline*, 102 J. CLINICAL ENDOCRINOLOGY & METABOLISM 3869, 3875 (2017), https://perma.cc/FM96-L228 (hereinafter "Endocrine Society Guidelines").

32. The health and wellbeing of all people, including those who are transgender, depends on their ability to live in a manner consistent with their gender identity.

33. Scientific and medical consensus recognizes that attempts to change an individual's gender identity to bring their gender identity into alignment with their sex assigned at birth are ineffective and harmful. Attempts to force transgender people to live in accordance with their sex assigned at birth, a practice often described as "conversion," or "reparative" therapy, is universally known to cause profound harm and is widely considered unethical and, in some places, unlawful.

34. For transgender people, the incongruence between their gender identity and sex assigned at birth can result in clinically significant stress and discomfort known as gender dysphoria.

35. Gender dysphoria is a serious medical condition recognized in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition. The World Health Organization's International Classification of Diseases, which is the diagnostic and coding compendia used by medical professionals, refers to the condition as "gender incongruence." Gender dysphoria is also recognized by the leading medical and mental health professional groups in the United States, including the American Academy of Pediatrics,

American Medical Association, the American Psychological Association, American Psychiatric Association, and the Endocrine Society, among others.

36. If left untreated, gender dysphoria can result in debilitating anxiety, severe depression, self-harm, and even suicidality. Untreated gender dysphoria often intensifies with time. The longer an individual goes without or is denied adequate treatment for gender dysphoria, the greater the risk of severe harms to the person's health.

37. The World Professional Association for Transgender Health ("WPATH") and the Endocrine Society have published widely accepted guidelines for treating gender dysphoria.[6] The goal of medical treatment for gender dysphoria is to eliminate clinically significant distress by helping a transgender person live in accordance with their gender identity. This treatment is sometimes referred to as "gender transition," "transition related care," or "gender-affirming care."

38. WPATH is an international and multidisciplinary association whose mission is to promote evidence-based health care protocols for transgender people. WPATH publishes the Standards of Care based on the best available science and expert professional consensus.

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[6] Endocrine Society Guidelines; World Prof'l Ass'n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* (7th Version, 2012), https://perma.cc/62K5-N5SX (hereinafter, "WPATH Standards of Care").

39. The WPATH Standards of Care and Endocrine Society Guidelines are widely accepted as best practices guidelines for the treatment of adolescents and adults diagnosed with gender dysphoria and have been recognized as authoritative by the leading medical organizations.

40. The WPATH Standards of Care and Endocrine Society Guidelines recognize that puberty delaying medication, hormone therapy, and surgery to align a person's primary and/or secondary sex characteristics (e.g., breasts/chest, external and/or internal genitalia, facial features, body contouring) with their gender identity are medically necessary services for many people with gender dysphoria.

41. The precise treatment of gender dysphoria for any individual depends on that person's individualized needs. The guidelines for medical treatment of gender dysphoria differ depending on whether the treatment is for an adolescent (minors who have entered puberty) or an adult. No pharmaceutical or surgical intervention is recommended or necessary prior to the onset of puberty, however. The individualized steps that many transgender people take to live in a manner consistent with their gender identity are known as "a transition" or "transitioning." The precise steps involved in transitioning are particular to the individual but may include social, medical, and legal transition. Determinations regarding medically necessary care are made on an individualized basis between by the medical professional and the patient.

42. Social transition entails a transgender individual living in accordance with their gender identity in all aspects of life. Social transition can include wearing attire, following grooming practices, and using pronouns consistent with that person's gender identity. The steps a transgender person can take as part of their social transition help align their gender identity with all aspects of everyday life.

43. Many transgender individuals also pursue legal transition, which involves taking steps to formally amend their legal identification documents to align with their gender identity, such as changing one's name through a court ordered legal name change and updating the name and gender marker on their driver's license, birth certificate, and other identification documents.

44. Medical transition, a critical part of transitioning for many transgender people, includes gender-affirming care that brings the sex-specific characteristics of a transgender person's body into alignment with their identity.

45. Gender-affirming care can involve counseling, hormone therapy, surgery, or other medically necessary treatments for gender dysphoria.

46. The most effective treatment for transgender adolescents and adults with gender dysphoria, in terms of both their mental and medical health, contemplates an individualized approach. Medical and surgical treatment interventions are determined by the health care team (usually involving medical and

mental health professionals) in collaboration with the patient, and the patient's parents/guardians, if the patient is an adolescent.

47. Under the WPATH Standards of Care, medical interventions may become medically necessary and appropriate after transgender youth reach puberty. In providing medical treatments to adolescents, pediatric physicians and endocrinologists work in close consultation with qualified mental health professionals experienced in diagnosing and treating gender dysphoria.

48. For many transgender adolescents, going through puberty as the sex assigned to them at birth can cause extreme distress. Puberty delaying medication allows transgender adolescents to pause puberty, thus minimizing and potentially preventing the heightened gender dysphoria and permanent physical changes that puberty would cause.

49. Puberty delaying treatment is reversible. When the adolescent discontinues treatment, puherty will resume. Puberty delaying treatment does not cause infertility.

50. For some transgender adolescents and adults, it is necessary to undergo hormone therapy, which involves taking hormones for the purpose of bringing their secondary sex characteristics into alignment with their gender identity (testosterone for transgender males, and estrogen and testosterone suppression for transgender females). Secondary sex characteristics are bodily features not associated with

external and internal reproductive genitalia (primary sex characteristics). Secondary sex characteristics include, for example, hair growth patterns, body fat distribution, and muscle mass development. Hormone therapy can have significant masculinizing or feminizing effects and can assist in bringing transgender people's secondary sex characteristics into alignment with their gender identity, and therefore is medically necessary care for transgender people who need it to treat their gender dysphoria.

51. Gender-affirming surgery might be sought by transgender people after puberty to treat symptoms of gender dysphoria by better aligning their primary or secondary sex characteristics with their gender identity. Though not all transgender people require or seek gender-affirming surgical care, such care can be medically necessary when determined to be in the best interests of the patient and supported by empirical evidence.

52. Gender-affirming medical care can be lifesaving treatment and has been shown to positively impact the short and long-term health outcomes for transgender people of all ages.

53. All of the treatments used to treat gender dysphoria are also used to treat other diagnoses or conditions. These treatments are not excluded from Medicaid coverage under the Challenged Exclusion when used to treat any diagnosis or condition other than gender dysphoria, yet they carry comparable risks and side

effects to those that can be present when treating gender dysphoria. Thus, the use of these treatments for gender dysphoria are not any more risky than for other conditions and diagnoses for which the same treatments are regularly used.

54. The consequences of untreated, or inadequately treated, gender dysphoria, however, are dire, as untreated gender dysphoria is associated with both clinically significant anxiety, depression, self-harm, and suicidality and higher levels of stigmatization, discrimination, and victimization, contributing to negative self-image and the inability to function effectively in daily life.

55. When transgender people are provided with access to appropriate and individualized gender-affirming care in connection with treatment of gender dysphoria, its symptoms can be alleviated and even prevented.

56. As such, the American Medical Association, American Psychological Association, American Psychiatric Association, Endocrine Society, American College of Obstetricians and Gynecologists, American Academy of Pediatrics, American Academy of Family Physicians, and other major medical organizations have recognized that gender-affirming care is medically necessary, safe, and effective treatment for gender dysphoria, and that access to such treatment improves the health and well-being of transgender people. These groups and others have explicitly advocated against blanket bans on gender-affirming care like the Challenged Exclusion.

57. The medical procedures for the treatment of gender dysphoria are not "cosmetic" or "elective" or for the mere convenience of the patient, but instead are medically necessary for the treatment of the diagnosed medical condition. They are not experimental or investigational, because decades of both clinical experience and medical research show that they are essential to achieving well-being for transgender patients with gender dysphoria.

B. The Medicaid Act and Florida's Medicaid Program

i. Medicaid Coverage

58. The Medicaid Act, Title XIX of the Social Security Act of 1965, 42 U.S.C. §§ 1396-1396w-6, creates a joint federal-state program that provides health care services to specified categories of low-income individuals.

59. Medicaid is designed to "enabl[e] each State, as far as practicable...to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence and self-care...." 42 U.S.C. § 1396-1.

60. States are not required to participate in the Medicaid program—but all states do. States that choose to participate must comply with the Medicaid Act and its implementing regulations. In return, the federal government reimburses each

participating state for a substantial portion of the cost of providing medical assistance. *See id.* §§ 1396b(a), 1396d(b), 1396(c).

61. The Medicaid Act requires each participating state to designate a single state agency charged with administering or supervising the state's Medicaid program. *Id.* § 1396a(a)(5). While a state may delegate certain responsibilities to other entities, such as local agencies or Medicaid managed care plans, the single state agency is ultimately responsible for ensuring compliance with all aspects of the Medicaid Act. *See, e.g.*, 42 C.F.R. §§ 438.100(a)(2), 438.100(d).

62. Each participating state must maintain a comprehensive state plan for medical assistance, approved by the Secretary of the U.S. Department of Health and Human Services. 42 U.S.C. § 1396a.

63. The state plan must describe how the state will administer its Medicaid program and affirm the state's commitment to comply with the Medicaid Act and its implementing regulations. *Id.*

64. Under the Medicaid Act, a participating state must provide medical assistance to certain eligibility groups. *Id.* § 1396a(a)(10)(A)(i). One such group is children and adolescents under age 18 whose household income is below 133% of the federal poverty level. *Id.* §§ 1396a(a)(10)(A)(i)(VI)-(VII), 1396a(l). Another mandatory eligibility category is individuals with a disability who receive Supplemental Security Income or meet separate disability and financial eligibility

standards established by the state. *Id.* §§ 1396a(a)(10)(A)(i)(II), 1396a(f). States have the option to cover additional eligibility groups. *Id.* §§ 1396a(a)(10)(A)(ii).

65. States must administer Medicaid in "the best interests of recipients." 42 U.S.C. § 1396a(a)(19).

ii. The Medicaid EPSDT Requirements

66. The Medicaid Act requires each participating state to cover certain health care services, including inpatient and out-patient hospital services and physician services, when medically necessary. 42 U.S.C. §§ 1396a(a)(10)(A), 1396d. States have the option to cover additional services, including prescription drugs, when medically necessary. *Id.*

67. One mandatory benefit under Medicaid is Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) services for beneficiaries under age 21. *Id.* §§ 1396a(a)(10)(A), 1396a(a)(43), 1396d(a)(4)(B), 1396d(r).

68. The fundamental purpose of the EPSDT Requirements is to "[a]ssure that health problems are diagnosed and treated early, before they become more complex and their treatment more costly." Ctrs. for Medicare & Medicaid Servs., State Medicaid Manual § 5010.B.

69. Pursuant to the EPSDT requirements, states must cover four specific, separate categories of screening services: medical, vision, dental, and hearing. 42 U.S.C. §§ 1396a(a)(10)(A), 1396d(a)(4)(B), 1396d(r)(1)-(4).

70. States also must cover "[s]uch other necessary health care, diagnostic services, treatment, and other measures deseribed in [1396d(a)] to correet or ameliorate defeets and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan." *Id.* § 1396d(r)(5). In other words, states participating in Medicaid must cover all medically necessary services for beneficiaries under age 21, even when those services are not covered for adults.

71. Services that fall under 42 U.S.C. § 1396d(a) include inpatient and outpatient hospital services, physician services, and prescription drugs. *Id.* § 1396d(a)(1), (2), (5)(A), (12).

72. Gender-affirming medical treatments, including puberty delaying medication, hormone therapy, and surgery come within the services described in section § 1396d(a) and, thus, are EPSDT services when they are necessary to correct or ameliorate gender dysphoria. *Id.* § 1396d(r)(5) (incorporating services listed in § 1396d(a)).

73. States must "arrang[e] for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment the need for which is disclosed by" screening services. *Id.* § 1396a(a)(43)(C).

74. States must initiate EPSDT services in a timely manner, as appropriate to the individual needs of the beneficiary, and absolutely no later than 6 months from the date of the request. 42 C.F.R. § 441.56(c).

iii. The Medicaid Comparability Requirements

75. Under the Medicaid Act, "the medical assistance made available to any individual ... shall not be less in amount, duration or scope than the medical assistance made available to any other such individual." 42 U.S.C. § 1396a(a)(10)(B)(i).

76. "Each service must be sufficient in amount, duration, and scope to reasonably achieve its purpose." 42 C.F.R. § 440.230(b).

77. A state "Medicaid agency may not arbitrarily deny or reduce the amount, duration, or scope of a required service ... to an otherwise eligible recipient solely because of the diagnosis, type of illness, or condition." 42 C.F.R. § 440.230(c).

iv. Florida's Medicaid Program

78. The State of Florida participates in the federal Medicaid program. Fla. Stat. §§ 409.901-409.9205. AHCA is the single state agency in Florida that is responsible for administering and implementing Florida's Medicaid program consistent with the requirements of federal law. *See* Fla. Stat. § 409.902; 42 U.S.C. § 1396a(a)(5); 42 C.F.R. § 431.10.

79. AHCA contracts with private managed care plans to provide health care services to most Medieaid beneficiaries. Fla. Stat. § 409.964.

80. The federal government reimburses Florida for approximately 60% of the cost of providing medical assistance through its Medicaid program. *See* U.S. Dep't of Health & Hum. Servs., Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2022 Through September 30, 2023, 86 Fed. Reg. 67479, 67481 (Nov. 26, 2021).

81. Florida regulations require AHCA to cover health care services that are medically necessary within the scope of Fla. Admin. Code R. 59G-1.035(6), 59G-1.010. To qualify as medically necessary, a service must meet several conditions. *See* Fla. Admin. Code R. 59G-1.010, incorporating by reference AHCA, Definitions Policy at 2.83 (2017) (defining medically necessary care).

82. For one, the service must be consistent with generally accepted professional medical standards and not experimental or investigational. *Id.*; Fla. Admin. Code R. 59G-1.035. To determine whether a particular service is consistent with generally accepted professional medical standards, AHCA must consider: "(a) Evidence-based clinical practice guidelines. (b) Published reports and articles in the authoritative medical and scientific literature related to tbe health service (published in peer-reviewed scientific literature generally recognized by the relevant medical

community or practitioner specialty associations). (c) Effectiveness of the health service in improving the individual's prognosis or health outcomes. (d) Utilization trends. (e) Coverage policies by other creditable insurance payor sources. (f) Recommendations or assessments by clinical or technical experts on the subjeet or field." *Id.* § 59G-1.035(4).

83. After considering those factors, AHCA must submit a report with recommendations to the Deputy Secretary for Medicaid for review, and the Deputy Secretary makes a final determination as to whether the health service is consistent with generally accepted professional medical standards and not experimental or investigational. *Id.* § 59G-1.035(5).

84. Until August 21, 2022, Florida Medicaid covered the full range of gender-affirming treatments, including puberty delaying medication, hormone therapy, and surgical eare.

85. Effective August 21, 2022, Florida excluded the coverage without any intervening change in federal Medicaid laws or the standard of care for gender dysphoria, as recognized by the medical community.

C. Defendants Adopt the Challenged Exclusion and Target Transgender Medicaid Beneficiaries for Discrimination.

86. On April 20, 2022, Florida's Department of Health ("FDOH") issued a misleading and factually inaccurate set of guidelines titled "Treatment of Gender

Dysphoria for Children and Adults" (hereinafter "FDOH Guidelines").[7] FDOH issued the FDOH Guidelines in direct response to the fact sheet from the U.S. Department of Health & Human Services regarding "Gender-Affirming Care and Young People."[8]

87. The FDOH Guidelines, which are non-binding in nature, directly contradicted the guidance from HHS, as well as the established medical guidelines supported by the country's largest and leading medical organizations.

88. The FDOH Guidelines stated that:

- Social gender transition should not be a treatment option for children or adolescents.
- Anyone under 18 should not be prescribed puberty delaying medication or bormone therapy.
- Gender reassignment surgery should not be a treatment option for children or adolescents.

89. Under the WPATH Standards of Care and Endocrine Society Guidelines, no one is provided pharmaceutical treatment for gender dysphoria until *after* the onset of puberty. No surgical interventions are recommended for

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[7] *See Treatment of Gender Dysphoria for Children and Adults*, FLORIDA DEP'T OF HEALTH (April 20, 2022), https://perma.cc/W33H-6P5Q.

[8] *See Gender-Affirming Care and Young People*, U.S. Dep't of Health & Human Servs. (March 2022), https://perma.cc/399W-T6AC.

transgender adolescents prior to the age of 18, *except* for limited reconstructive surgery for adolescents who have reached Tanner Stage 5 and for whom it is deemed medically necessary by qualified mental and medical health care professionals.

90. The FDOH Guidelines were criticized by, among others, a group of more than 300 Florida health care professionals who care for transgender and gender diverse youth. This group denounced the FDOH Guidelines for citing "a selective and non-representative sample of small studies and reviews, editorials, opinion pieces and commentary to support several of their substantial claims" and misrepresenting "high-quality studies" by making "conclusions that are not supported by the authors of the articles."[9]

91. The 300 Florida health care professionals further stated that the FDOH Guidelines "contradict[] existing guidelines from the American Academy of Pediatrics, the Endocrine Society, the American Academy of Child and Adolescent Psychiatry and the World Professional Association for Transgender Health," and that "[t]hese national and international guidelines are the result of careful deliberation and examination of the evidence by experts including pediatricians, endocrinologists, psychologists and psychiatrists."

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[9] Brittany S. Bruggeman, *et al.*, *Opinion: We 300 Florida health care professionals say the state gets transgender guidance wrong | Open letter*, TAMPA BAY TIMES (Apr. 27, 2022), https://perma.cc/5UWE-LURH.

92. On April 20, 2022, based on the publication of the FDOH Guidelines, Seeretary Marstiller sent a letter to Tom Wallace, AHCA's Deputy Seeretary for Medicaid, requesting that AHCA determine if the treatments addressed in the FDOH Guidelines "are consistent with generally accepted professional medical standards and not experimental or investigational."[10]

93. The request from Secretary Marstiller to Deputy Secretary Wallace was highly unusual, as AHCA does not generally draft a GAPMS report for services that it is already covering.

94. While AHCA purported to go through its required rule-making process, it was clear the outcome was predetermined: to restrict access to medically necessary gender-affirming care for transgender people in Florida.

95. On June 2, 2022, Defendants published their report, "Florida Medicaid: Generally Accepted Professional Medical Standards Determination on the Treatment of Gender Dysphoria" (hereinafter "GAPMS Memo").[11] The publication of the GAPMS Memo was accompanied by the publication of a political webpage within AHCA's website titled "Let Kids Be Kids"

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[10] *Letter from AHCA Secretary Marstiller to Deputy Secretary Wallace* (April 20, 2022), https://perma.cc/YS7S-DFAX.

[11] AHCA, *Florida Medicaid: Generally Accepted Professional Medical Standards Determination on the Treatment of Gender Dysphoria* (June 2, 2022), https://perma.cc/SUB9-V7DW.

(https://ahca.myflorida.com/letkidsbekids/) that included graphics, misleading "fact-checking" of HHS's guidance, and false assertions about social media's alleged influence on experiences of gender dysphoria.

96. The GAPMS Memo wrongly concluded that gender-affirming medical treatments, including puberty blockers, hormone therapy, and surgery, "do not conform to GAPMS [("generally accepted professional medical standards")] and are experimental and investigational." Deputy Secretary Wallace signed the GAPMS Memo and noted his concurrence.

97. To support this conclusion, the GAPMS Memo cited to, and relied upon, five non-peer-reviewed, unpublished "assessments" that Defendants commissioned. The "assessments" are the following:

- Romina Brignardello-Petersen, DDS, MSc, PhD and Wojtek Wiercioch, MSc, PhD: Effects of Gender Affirming Therapies in People with Gender Dysphoria: Evaluation of the Best Available Evidence. 16 May 2022.
- James Cantor, PhD: Science of Gender Dysphoria and Transsexualism. 17 May 2022.
- Quentin Van Meter, MD: Concerns about Affirmation of an Incongruent Gender in a Child or Adolescent. 17 May 2022.

- Patrick Lappert, MD: Surgical Procedures and Gender Dysphoria. 17 May 2022.
- Kevin Donovan, MD: Medical Experimentation without Informed Consent: An Ethicist's View of Transgender Treatment for Children. 16 May 2022.

98. These "assessments" illustrate how the GAPMS Memo is the product of bias and was engineered to achieve a particular result.

99. For example, although the GAPMS Memo presents Dr. Quentin van Meter as an expert in medical treatment for gender dysphoria, at least one court in Texas barred him from providing expert testimony on the on the "question of whether an adolescent transgender child should be administered puberty blockers and whether affirmation of an incongruent gender in a child is harmful or not."[12] Dr. Van Meter is the president of the American College of Pediatricians (not to be confused with the American Academy of Pediatrics). The American College of Pediatricians is not a professional association but instead a political group that, among other things, opposes marriage equality for same-sex couples, supports the

[12] Stephen Caruso, *A Texas judge ruled this doctor was not an expert. A Pennsylvania Republican invited him to testify on trans health care*, PENNSYLVANIA CAPITOL-STAR (Sept. 15, 2020), https://perma.cc/P8AU-3RFC.

provision of conversion therapy, and describes childhood gender dysphoria as "confusion."

100. The GAPMS Memo also cites to Dr. James Cantor as an expert on gender dysphoria. However, Dr. Cantor admitted in court to having no clinical experience in treating gender dysphoria in minors and no experience monitoring patients receiving medical or surgical treatments for gender dysphoria.[13]

101. AHCA's GAPMS Memo also cites to an "assessment" authored by Dr. Romina Brignardello-Petersen and a post-doctoral fellow purporting to review the scientific literature regarding gender dysphoria and its treatment. Dr. Brignardello-Petersen has no particular expertise regarding gender dysphoria and is a member of the Society for Evidence Based Gender Medicine ("SEGM"), a group that opposes standard medical care for gender dysphoria, has no publications or conferences, and, upon information and belief, consists solely of a website created by a small group of people.

102. AHCA cites to an "assessment" by Dr. Patrick Lappert, a non-board-certified plastic surgeon. A federal court recently noted that there is evidence that calls Dr. Lappert's "bias and reliability [to testify regarding gender dysphoria] into

[13] In *Eknes-Tucker v. Marshall*, No. 2:22-CV-184-LCB, 2022 WL 1521889, at *5 (M.D. Ala. May 13, 2022), based on Dr. Cantor's lack of experience in providing this type of care, "the Court gave his testimony regarding the treatment of gender dysphoria in minors very little weight."

serious question" and that Dr. Lappert "is not qualified to render opinions about the diagnosis of gender dysphoria, its possible causes, … the efficacy of puberty blocking medication or hormone treatments, the appropriate standard of informed consent for mental health professionals or endocrinologists, or any opinion on [] non-surgical treatments," and that his views "do not justify the exclusion" of gender-affirming medical care.[14]

103. On June 17, 2022, AHCA issued a Notice of Proposed Rule seeking to amend Florida Administrative Code 59G-1.050 to prohibit Florida Medicaid from covering "services for the treatment of gender dysphoria," including: "1. Puberty blockers; 2. Hormones and hormone antagonists; 3. Sex reassignment surgeries; and 4. Any other procedures that alter primary or secondary sexual characteristics." The Proposed Rule also stated that, "For the purpose of determining medical necessity, including Early and Periodic Screening, Diagnosis, and Treatment (EPSDT)," the aforementioned services "do not meet the definition of medical necessity in accordance with Rule 59G-1.010, F.A.C."[15]

[14] *Kadel v. Folwell*, No. 1:19CV272, 2022 WL 3226731, at *12-13, 32 (M.D.N.C. Aug. 10, 2022).

[15] https://www.flrules.org/gateway/View_Notice.asp?id=25979915.

104. The Proposed Rule sought to prohibit Medicaid coverage of medical treatment for gender dysphoria for both transgender adolescents and adults, going beyond the FDOH Guidance.

105. During the 21 days following the issuance of the Proposed Rule, from June 17, 2022 to July 8, 2022, thousands of comments were submitted by individuals, organizations, and medical professionals across Florida in opposition to the rule.

106. On July 8, 2022, AHCA held a public hearing on the proposed rule.

107. The hearing, which was set for 3:00pm on a Friday afternoon, featured a "panel of doctors," none of whom had any clinical experience treating gender dysphoria, to respond to any substantive comments from the audience. The panel of doctors included: Dr. Andre Van Mol; Dr. Quentin Van Meter; and Dr. Miriam Grossman.

108. The panel highlighted AHCA's singular focus on prohibiting coverage of and access to medically necessary gender-affirming care.

109. Dr. Andre Van Mol is a board member of Moral Revolution (https://www.moralrevolution.com/), an organization that believes that "[t]he multitude of possible gender identities and the normalization of same-sex sexual behavior points to a society that has abandoned the desire to accurately define and socialize humanity as a reflection of God's image," and that "[s]ome people

experience same-sex attraction and gender dysphoria … not because they were 'born that way,' but beeause they were born human into a fallen world, and because society has disrupted and confused how we teach children who they are."

110. In reference to transgender youth, Dr. Miriam Grossman has stated that "conditioning children into believing that a lifetime of impersonating someone of the opposite sex, achievable only through chemical and surgical interventions, is harmful to youths."

111. The public hearing was also characterized by participants who were flown in from out of state, who did not profess to be Florida Medicaid participants, or who were opponents of transgender rights bussed in to testify in support of the rule. Many of them were carrying signs and shirts reflecting the "Let Kids Be Kids" slogan that appears on AHCA's webpage regarding the GAPMS Memo. AHCA allowed stickers containing their slogan to be passed out at the front door and at the sign-in table as attendees entered.

112. Notwithstanding the seemingly biased nature of the proceedings, thousands of commenters submitted written comments and many testified at the hearing in opposition to the Proposed Rule. The range of comments highlighted, among other things: the significant and immediate harms that transgender Medicaid beneficiaries in Florida would suffer; the flaws of the GAPMS Memo; the well-documented evidence base for gender-affirming care, including that it is safe and

effective for the treatment of gender dysphoria; and that the Proposed Rule was unlawful.

113. Among the comments submitted to Defendants in opposition to the Proposed Rule was a comment by a team of legal and medical experts from Yale Law School, the Yale School of Medicine's Child Study Center and Departments of Psychiatry and Pediatrics, University of Texas Southwestern, and University of Alabama at Birmingham that identifies and refutes the many unscientific claims behind the GAPMS Memo.[16]

114. The comment by the team of experts indicated that:

- **The GAPMS Memo falsely claims that the scientific evidence does not support medical treatment for gender dysphoria.** In fact, medical care for gender dysphoria is supported by a robust scientific consensus. The specific medical services at issue have been used worldwide for decades, meet generally accepted medical standards, and are not experimental.
- **The GAPMS Memo urges a discriminatory policy that violates the federal and state constitutions and federal and state law.** AHCA offered the report to justify the denial of Medicaid coverage for medical

[16] *Letter from Anne L. Alstott et al. to AHCA Secretary Marstiller* (July 8, 2022), https://perma.cc/E432-YUQ7.

care for gender dysphoria. But this discriminatory policy illegally targets transgender people. Neither the June 2 GAPMS Memo nor the AHCA proposal would apply to similar treatments routinely offered to eisgender people.

- **The GAPMS Memo repeatedly and erroneously dismisses solid medical research studies as "low quality," demonstrating a faulty understanding of statistics, medical regulation, and scientific research.** The GAPMS Memo makes unfounded criticisms of robust and well-regarded clinical research, while disregarding other relevant studies altogether. If Florida's Medicaid program applied the June 2 GAPMS Memo's approach to all medical procedures equally, it would have to deny coverage for widely used medications like statins (cholesterol-lowering drugs taken by millions of older Americans) and common medieal procedures like mammograms and routine surgeries.
- **The GAPMS Memo cites sources that have no scientific merit.** The GAPMS Memo relies on pseudo-scienee, particularly purported expert "assessments" that are biased and full of errors. The "assessments" are written by authors whose testimony has been disqualified in court and who have known ties to anti-LGBTQ advocacy groups. The GAPMS

Memo's unfounded claims come from unqualified sources, which include a blog entry, letters to the editor, and opinion pieces.

115. The comment by the team of experts was accompanied by the publication of a report, "A Critical Review of the June 2022 Florida Medicaid Report on the Medical Treatment of Gender Dysphoria," that represents the first comprehensive examination of Florida's GAPMS Memo. The authors of this report contend that the GAPMS Memo is a misleading document intended to justify denying Florida Medicaid coverage for gender dysphoria treatment.[17]

116. In its comment, the American Academy of Pediatrics noted: "[T]he mental and physical health and well-being of transgender children and adolescents often rely on their abilities to access much needed mental and physical health care—care that is in keeping with the widely recognized evidence-based standards of care for gender dysphoria. In proposing this rule, Florida ignores broad consensus among the medical community as to what those evidence-based standards of care are, and instead seeks, for its own discriminatory reasons, to impose alternate standards and

[17] *A Critical Review of the June 2022 Florida Medicaid Report on the Medical Treatment of Gender Dysphoria* (July 8, 2022), https://perma.cc/XZV3-PBEA.

an outright ban of specific treatments for transgender adolescents in the state's Medicaid program."[18]

117. Similarly, the Endocrine Society submitted a comment stating: "The proposed rule would deny Medicaid beneficiaries with gender dysphoria access to medical interventions that alleviate suffering, are grounded in science, and are endorsed by the medical community. The medical treatments prohibited by the proposed rule can be a crucial part of treatment for people with gender dysphoria and necessary to preserve their health. … [R]esearch shows that people with gender dysphoria who receive puberty blockers and/or hormone therapy experience less depression, anxiety, and suicidal ideation. Several studies have found that hormone therapy is associated with reductions in the rate of suicide attempts and significant improvement in quality of life. In light of this evidence supporting the connection between lack of access to gender-affirming care and lifetime suicide risk, banning such care can put patients' lives at risk."[19]

118. In addition, interviews with researchers whose studies were cited within the FDOH Guidelines and GAPMS Memo have expressed alarm at how Defendants

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[18] *Letter from the American Academy of Pediatrics and the Florida Chapter of the AAP to AHCA Deputy Secretary Tom Wallace* (July 7, 2022), https://perma.cc/ND5M-TGYJ.

[19] *Letter from the Endocrine Society to AHCA* (July 8, 2022), https://perma.cc/F5TX-J3JY.

have misinterpreted and misrepresented their studies to justify the Challenged Exclusion.[20]

119. Notwithstanding the thousands of comments submitted to AHCA in opposition to the Proposed Rule, as well as the substantive evidence and extensive commentary submitted by leading medical and legal experts and organizations, Defendants filed the Challenged Exclusion as a final rule for adoption on August 1, 2022, a mere three weeks after the close of the public comment period and without having responded in writing to material or timely written comments, as required by Fla. Stat. § 120.54(3)(e)(4).

120. Notice of the Final Adopted Version of the Challenged Exclusion was published on FLRules.com on August 10, 2022 and stated that the Challenged Exclusion would become effective on August 21, 2022.[21]

121. The Challenged Exclusion, in its final adopted form within Florida Administrative Code 59G-1.050, states as follows:

> (7) Gender Dysphoria.
>
> (a) Florida Medicaid does not cover the following services for the treatment of gender dysphoria:

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[20] Sam Greenspan, *How Florida Twisted Science to Deny Healthcare to Trans Kids*, VICE NEWS (Aug. 3, 2022), https://perma.cc/GZ6P-W2WN.

[21] https://www.flrules.org/gateway/View_Notice.asp?id=26157328.

1. Puberty blockers;

2. Hormones and hormone antagonists;

3. Sex reassignment surgeries; and

4. Any other proeedures that alter primary or secondary sexual charaeteristics.

(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.

122. Coverage for the four services listed within the Challenged Exclusion is still available when those services are medically necessary for the treatment of conditions other than gender dysphoria.

123. The Challenged Exclusion ignores the established seientific and medical consensus that the four specified services are frequently medically neeessary, safe, and effective for treating gender dysphoria.

124. The Challenged Exclusion results in AHCA refusing to cover medieally necessary treatments for gender dysphoria.

125. In addition, the Challenged Exclusion is one of a series of measures the State has taken targeting transgender people, and LGBTQ people more broadly, for discrimination.

126. For example, surrounding the GAPMS Memo's release and the adoption of the Challenged Exclusion:

a. The FDOH issued its factually inaccurate April 2022 guidelines titled "Treatment of Gender Dysphoria for Children and Adults";[22]

b. Florida enacted its infamous "Don't Say Gay" law, Fla. Stat. § 1001.42(8)(c) (2022);[23]

c. Governor DeSantis removed a state attorney from office for, in part, saying he would refuse to enforce any laws criminalizing gender-affirming care;[24]

d. The FDOH sent the Florida Board of Medicine ("FBOM") a "Petition to Initiate Rulemaking," asking it to, among other things, adopt a categorical ban on the provision of gender-affirming medical care to people under 18 years of age and, with respect to adults, to adopt a 24-hour waiting period;[25]

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[22] *Treatment of Gender Dysphoria for Children and Adults*, FLORIDA DEP'T OF HEALTH (April 20, 2022), https://perma.cc/W33H-6P5Q.

[23] Enacted July 1, 2022, the law seeks to erase LGBTQ people and related content from Florida public schools. The widely used "Don't Say Gay" moniker fails to recognize the harms this law intentionally inflicts upon transgender people and others who identify as members of the LGBTQ community.

[24] Florida Executive Order No. 22-176 (Aug. 4, 2022), https://perma.cc/VSG9-2SUJ.

[25] *Petition to Initiate Rulemaking Setting the Standard of Care for Treatment of Gender Dysphoria* (July 28, 2022), https://perma.cc/3PP7-N6WW.

e. The FBOM initiated a rulemaking process for a proposed rule to, among other things, ban gender-affirming care for people under the age of 18;[26]

f. The Florida Department of Business and Professional Regulation lodged a public nuisance complaint against a bar catering to transgender people when that bar had a drag queen reading event;[27] and

g. Florida officials and their spokespersons made a litany of statements denigrating transgender people.[28]

127. The discriminatory animus by Defendants toward transgender people is clearly evident by their actions, as the adoption of the Challenged Exclusion deliberately targets transgender people for discrimination in Florida.

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[26] *Meeting Minutes*, FLORIDA BOARD OF MED. (Aug. 5, 2022), https://perma.cc/52A3-2E5V.

[27] *Fla. Dep't of Bus. and Prof. Reg., Div. of Alcoholic Beverages and Tobacco v. R House, Inc.*, Case No. 2022-035976, Admin. Complaint (July 26, 2022), https://perma.cc/8DRL-KVWY.

[28] Jeremy Redfern (@JeremyRedfernFL), Twitter (Aug. 14, 2022), https://tinyurl.com/2p8vajvw; Governor Ron DeSantis (@GovRonDeSantis), Twitter (Aug. 16, 2022), https://tinyurl.com/yckkuh32; Christina Pushaw (@ChristinaPushaw), Twitter (Aug. 19, 2022), https://tinyurl.com/2p8r5r6c.

D. The Plaintiffs

Plaintiff August Dekker

128. August Dekker is a 28-year-old transgender man.

129. August is unemployed and receives Supplemental Security Income due to disability, as he lives with debilitating rheumatoid arthritis. He has been a Medicaid beneficiary in Florida since 2014.

130. August experiences and has been diagnosed with gender dysphoria.

131. As a child, even as early as 5 years of age, August felt uncomfortable being perceived as a girl. For example, he would always choose to play a male character when he was roleplaying with his brothers and would also play male characters when he would play "house."

132. Around the age of 13, August was extremely distraught when he got his first period. He ran to his mom crying and wondering what was happening because he did not feel that he was a girl.

133. However, because of his family's religious beliefs, August felt forced to suppress his gender identity as a child and adolescent, which caused him great distress and anxiety.

134. Once he graduated high school, August felt freer to explore his gender expression and come to terms with his gender identity as a man. By 2015, August began to socially transition and live openly as the man that he is.

135. Not long after, August decided to seek out medical care. It took him a while to find a provider who would be qualified and with whom he felt comfortable. Once he found a provider at Metro Inclusive Health in Tampa, August began working with a therapist before starting hormone therapy. The therapist diagnosed August with gender dysphoria in 2017.

136. Following the diagnosis of gender dysphoria and working with and under the care of his medical and mental health providers, August began undergoing hormone therapy as medically necessary treatment for his gender dysphoria in 2017.

137. August has since worked with different medical and mental health providers, who continue to recommend hormone therapy as medically necessary treatment for his gender dysphoria. He now sees a therapist at Solace Behavioral Health in Tampa and receives his hormone therapy through Planned Parenthood in Tampa.

138. At present, at the recommendation of his medical and mental health providers, August is being prescribed testosterone hormone therapy as treatment for his gender dysphoria. The prescription must be written every month. Up until now, Medicaid has covered August's testosterone hormone therapy.

139. In addition, in consultation with and under the care of his medical and mental health providers, August obtained chest surgery as treatment for his gender dysphoria in April 2022. This surgical treatment, which was covered by Medicaid,

was recommended by his providers as medically necessary treatment for August's gender dysphoria. And it was covered by Medicaid.

140. Medicaid has always covered August's medically necessary gender-affirming medical care as recommended by his medical and mental health providers to treat his gender dysphoria.

141. Being able to receive hormone therapy in the form of testosterone injections and to have chest surgery has allowed August to bring his body into alignment with who he is, provided a great deal of relief to August, and relieved some of the clinically significant distress underlying his gender dysphoria. It has given August the ability to not hate himself or his body and has brought great comfort to his life.

142. Having access to this medically necessary care has allowed August to be the version of himself that he pictured growing up. For August, it feels natural and normal to be able to live as the man that he is.

143. Following his chest surgery, August was able to celebrate his birthday with some friends outdoors in a state park. Having a more masculine chest that conformed with his identity allowed August to be shirtless in public for the first time ever, just like any other man. It was an afternoon full of joy and laughter for August, and he had never felt more euphoric about his body than he did in that moment.

144. AHCA's adoption of the Challenged Exclusion has caused August a great deal of distress and anxiety. When August first learned of the new regulation, he felt a great sense of dread. August is now fearful of the future.

145. August's only source of income is his monthly Supplemental Security Income payments of $841. He uses this limited income to pay for rent, food, and necessities, and simply cannot afford his medically necessary hormone therapy without Medicaid, which would cost $60-65 per month.

146. While August could ask some family and friends for money in order to afford his medically necessary care, that is neither guaranteed nor sustainable. It also feels dehumanizing and shameful to August to have to ask for help all the time, especially when his hormone therapy is medically necessary health care recommended by his doctors and which Medicaid has covered until now.

147. August also has experienced the physical effects of having to stop hormone therapy for a period of time. That experience caused him to lose muscle mass, have a higher pitched voice, and lose some of his body and facial hair such that it caused him distress and to a degree that people started perceiving him as a woman instead of the man that he is. It caused August great discomfort and anguish to be perceived as such, and he does not want to ever have to experience that again.

148. The adoption of the Challenged Exclusion, along with other actions taken by Florida's current administration targeting transgender people, have shaken

August and caused him to lose hope. August no longer feels safe to be an out transgender person in Florida. Because of the discrimination he sees stoked by Florida's policy decisions to target transgender people, August often worries that someone will perceive him as transgender and decide they want to hurt him. He is frightened about the possibility that losing access to his medically necessary gender-affirming care will cause physical changes that will make it more likely for someone to perceive him as transgender or more feminine. If someone perceives him as transgender or more feminine, August is afraid that they will verbally or physically assault him.

149. It is incredibly stressful and debilitating for August to have to worry about whether he will be able to get the medical care that he needs, or whether in its absence, he will be incorrectly perceived as female.

150. The Challenged Exclusion threatens the health and wellbeing of transgender Medicaid beneficiaries like August.

Plaintiff Brit Rothstein

151. Brit Rothstein is a 20-year-old transgender man.

152. Brit is a junior in at the University of Central Florida (UCF), where he is studying digital media and minoring in information technology. Brit has a full scholarship to attend UCF, which is the only way that he is able to go to college as his family is low-income and could not otherwise afford tuition and living expenses.

Brit worked hard to obtain a Florida Bright Futures scholarship so that he would be able to attend college. He also received a Top Ten Knights Scholarship from the UCF. In addition, Brit participates in a federal work study program, which provides part-time jobs for students with financial need, while taking 15 credits this semester.

153. Given his and his family's very limited income, as well as his age, Brit receives his health care coverage through Florida's Medicaid program, as administered through Sunshine Health.

154. A transgender man, Brit was incorrectly assigned the sex female at birth, but his gender identity is male.

155. Brit experiences gender dysphoria in relation to the disconnect between his sex assigned at birth and his gender identity.

156. Since the third grade, Brit has been aware of his male gender identity. When he was younger, Brit's mom would try to force him to wear dresses to church but he hated dresses and would only want to wear slacks. He also did not understand why he could not have short hair. Even as a child, stereotypical assumptions and expectations regarding his sex assigned at birth did not make sense to him.

157. In the sixth grade, as he approached puberty, Brit's anxiety and depression surrounding his sex assigned at birth was exacerbated, and he would become physically ill when he had to go into the girls' locker room for P.E. Fortunately, there was a guidance counselor who understood the discomfort that Brit

experienced in the locker room and the manifesting anxiety and distress it caused him, so she helped him transfer out of P.E.

158. While he was in the seventh grade, Brit was seeing a therapist due to unrelated issues. His therapist saw how much Brit was struggling with not being able to live his life as a boy and, through his sessions with his therapist, Brit became more comfortable with how he was feeling and came to understand that he was a boy. Brit's therapist also helped Brit navigate how to talk to others about his gender identity.

159. After a lot of research about how to explain to his family how he felt and that he was transgender, Brit came out to his dad in 2015, at age 13, and asked that he be treated in accordance with his male gender identity. Brit's parents are divorced, and he came out only to his dad at first. Brit's dad was very supportive and allowed Brit to wear a binder (a garment that helps to give the appearance of a flatter chest) at his house and live as his true authentic self when he was there.

160. Unfortunately, Brit was not able to do the same at his mother's house because she disapproved of him. For example, when Brit came out to his mother as transgender in 2016, she called him an "abomination" and disowned him. Brit has not had any contact with his mother or her side of the family since then.

161. Around July 2015, when Brit was 14 years old, Brit began seeing a psychologist, and continued therapy with her until he went to college. Brit's

psychologist diagnosed him with gender dysphoria and, after a couple of years of counseling, the psychologist referred Brit to Joe DiMaggio Children's Hospital to meet with a pediatric endocrinologist.

162. Because Brit's mother objected to the medical care for Brit's gender dysphoria recommended by Brit's mental health and medical providers, Brit's dad had to go to court, where he was granted by the court sole decision-making authority as it related to issues involving Brit's gender identity.

163. Thereafter, when Brit was 17 years old, he began to see a pediatric endocrinologist at Joe DiMaggio. By then, Brit had been diagnosed with gender dysphoria approximately four years prior and had been in consistent and regular counseling since that time. Brit was also living in accordance with his male gender identity to the maximum extent possible, given his family situation.

164. Brit's pediatric endocrinologist determined that it was medically necessary for Brit to begin hormone blockers, which she prescribed for him, and oversaw his treatment. Months later, Brit also began testosterone hormone therapy as medically necessary treatment for his gender dysphoria at his pediatric endocrinologist's recommendation. Medicaid has covered Brit's gender-affirming health care needs, including therapy, blood tests, office visits, and his prescriptions for hormone blockers and testosterone.

165. Hormone therapy, in the form of testosterone, has impacted Brit's life in many positive ways, including the changes to his physical body, his mental and emotional health, and even the self-eonfidence he has gained through existing in a body that feels more like his own.

166. When he was 18, Brit was able to obtain a court order for legal name change, changing his legal name to Brit Andrew Rothstein, which aligned with his gender identity and who he knows himself to be. Brit also amended his legal government-issued identification documents to reflect his new legal name and correct gender marker as male.

167. Still, however, Brit continues to experience significant dysphoria related to his chest. Ever since his chest developed, Brit has hated the way it looks and feels, and has long known that he needs to have chest surgery to bring his body into alignment with who he is.

168. Brit wears a binder almost every day, usually for 10-12 hours per day, depending on his schedule. His binder causes him discomfort, leaves skin indentations, and sometimes causes bruising on his ribcage. In 2018, Brit had to go to the emergency room for chest contusions caused by wearing his binder for too long. Having top surgery would allow Brit to no longer wear a restrictive binder just to navigate his daily life. Unfortunately, there are very few medical providers in

Florida who are both competent in performing gender-affirming chest surgery, and even fewer who also take Medicaid.

169. Brit finally found a surgeon at the University of Miami who accepts Medicaid for chest surgeries in January 2022. Brit had his consultation with the surgeon in May and the surgeon recommended that Brit undergo gender-affirming chest surgery, which was pre-authorized by Medicaid. When Brit received his pre-authorization on August 11, 2022, he felt blessed to finally have the chance to obtain the gender-affirming care he needed.

170. Brit was elated to learn that he would finally be getting the surgery that he needed and had long awaited, and he even had a date scheduled: December 22, 2022. For Brit, it would be an understatement to say that he was looking forward to the surgery. The surgery would allow Brit to bring his body into alignment with who he is. It would also eliminate the need for Brit to wear a restrictive and painful binder to hide that part of his body.

171. However, the very next day after Brit learned his surgery had been pre-authorized, Brit learned that AHCA adopted a rule that prohibited Medicaid coverage for Brit's medically necessary gender-affirming chest surgery. To Brit, it was a punch to the gut to learn that the state of Florida had decided to strip coverage for medically necessary medical care from him and other transgender Floridians on Medicaid. It was the highest of highs followed by the lowest of lows.

172. What is worse, without Medicaid, Brit cannot afford to pay for his testosterone prescription or for his surgery, which is still scheduled for December 22, 2022. Because of the Challenged Exclusion, Brit is unable to access to the medical care for his gender dysphoria that his medical providers have determined is medically necessary for his health and wellbeing.

173. Brit's family is also of very limited income, and he does not have family members who can pay for his care. Brit's dad is a single parent, who has arranged his entire life around being the sole-caretaker for Brit's twin sister, who lives with cerebral palsy and other disabilities. Brit's dad needs to have the same schedule as his sister because she requires around the clock care and attention. As such, Brit's has worked as a teachers' assistant for students with special education needs in the Broward County School District, a job which pays approximately $21,000 per year. Brit's dad is thus barely able to make ends meet and cannot afford to financially help Brit access the medical care he needs.

174. Brit has spent a long time fighting to become the man that he knows himself to be. He has overcome obstacles and worked hard to get an education and have access to the medical care his providers have deemed medically necessary to treat his gender dysphoria, yet Defendants have created an unnecessary additional barrier blocking Brit from the medical care that he needs, and which would allow him to feel like his body is in alignment with who he truly is.

175. Even though Brit is legally male in the eyes of the state and federal government, has testosterone circulating through his body, and has grown facial hair, Brit still lives in fear every day that he will be misperceived as female or perceived as transgender due to his chest.

176. In high school, Brit recognized how fortunate he was to have a supportive parent who loved him for who he is. Not everyone has that. There were multiple students at Brit's high school who attempted or died by suicide, so Brit decided that he needed to advocate for those who did not have the support that he had from his dad. As a result, Brit was invited to join the Broward County Superintendent's LGBTQ+ Advisory Council, and Brit was the President of his school's Gay/Straight Alliance (GSA) Club. Brit supported his fellow transgender classmates the best that he could, because Brit believes that everyone deserves to feel accepted for who they are.

177. For Brit, the State's decision to deny transgender people, like himself, of access to medically necessary health care and being treated differently than others solely for being transgender is unthinkable and wrong.

Plaintiff Susan Doe

178. Susan Doe is the daugbter of Jane and John Doe.

179. Jane Doe is a full-time mom and homemaker. John Doe works for the federal government. He has worked there for 19 years.

180. Along with their two children, Jane and John live in Brevard County, Florida.

181. Jane and John adopted Susan, their 12-year-old daughter, out of medical foster care in Florida when she was 2 years old.

182. Susan is transgender.

183. When Jane and John adopted Susan out of foster care, Susan had several medical issues. She was originally placed in regular foster care and was then moved into the medical foster care program after an incident where she stopped breathing as an infant. At the time she came into the Does' care, she had severe acid reflux that needed treatment and was barely meeting developmental milestones.

184. Because Jane and John adopted Susan out of foster care, she is eligible for Medicaid coverage until she turns 18. Susan has thus been eligible for and enrolled in Florida's Medicaid program since she entered Florida's foster care system as an infant. Jane and John have kept Susan on Medicaid in order to ensure continuity of care with her existing providers and to ensure that her medical needs are properly met.

185. Although Susan was assigned male at birth, she has known that she is a girl from a very young age. When she was 3 years old, Susan first told her parents that she was a girl. Jane and John allowed Susan to explore her gender expression in deliberate and gradual steps. For example, Susan liked to wear ribbons in her hair

and pink bracelets to school, even when she still wore typical boy clothes and had not yet grown out her hair. Jane and John kept princess dresses for Susan at home, and she would often change into a dress as soon as she came home from school.

186. When Susan was in first grade, she became extremely unhappy with her assigned gender. Before that time, she had mostly been a very happy-go-lucky child, but starting in first grade she began getting angry and frustrated easily, and then would become incredibly sad, often crying for 20 minutes or more.

187. Jane and John consulted resources online and researched gender dysphoria in children, and as Susan's parents, had to acknowledge that the discrepancy between Susan's sex assigned at birth and how she felt inside was causing her to suffer.

188. The Does looked for a therapist for Susan. Ultimately, Susan and Jane were able to go to one session with a therapist when Susan was 6, and the therapist advised Jane on how to best support Susan. The therapist told Jane to keep listening to Susan and to allow her to express herself, as Jane and John had been doing. The therapist also suggested buying clothes from the girls' department that were gender neutral so Susan could wear them to school without attracting attention about her gender presentation.

189. Susan had her last short haircut when she was 6 years old, and when she saw how it looked, she started crying because she felt like the short haircut did not reflect her identity. After that, she started growing out her hair.

190. Around the same time, Jane found out that Susan had started to introduce herself to people with her chosen name, which has since become her legal name, and is more typically feminine.

191. During the summer of 2017, which was the summer before Susan started second grade, Susan told Jane and John unequivocally: "I need to be a girl." To ensure that they were properly supporting Susan, Jane and John took Susan to see a therapist as a family. The therapist diagnosed Susan with gender dysphoria. The therapist also made clear to the Does that Susan knows exactly who she is and that any problems stemmed from when people question Susan's identity. The therapist thus recommended Jane and John continue to support Susan in her social transition.

192. Following the therapist's advice, Jane and John followed Susan's lead and bought her more traditionally feminine clothes, including dresses and skirts to wear to school. Jane and John also worked with the principal and teachers at Susan's school to try to make sure that they used the appropriate name and pronouns for Susan. In addition, the therapist shared with Jane and John, and the Does in turn

shared with Susan's school, the latest research on helping children with gender dysphoria adjust well at school, in addition to in the home.

193. After Susan was able to socially transition and live in accordance with her firmly asserted female gender identity, Jane and John observed Susan feeling a sense of joy. Susan was happy and comfortable in her own skin.

194. In addition, the therapist further recommended that Susan see a pediatric endocrinologist, who could monitor her hormone levels for the onset of puberty and assist with any future medical needs.

195. Jane and John looked for a pediatric endocrinologist that was close to them, but ultimately began working with a pediatric endocrinologist at Joe DiMaggio Children's Hospital in south Florida. Susan has been seeing her pediatric endocrinologist since 2019. The Does drive three hours there and three hours back for every appointment. Initially, the pediatric endocrinologist closely monitored Susan's hormone levels to determine the onset of puberty. Susan had visits approximately every three months.

196. Jane and John have been very deliberate in their approach to supporting Susan. Their goal has always been to support their daughter while following the advice and recommendations of medical and health professionals experienced in dealing with gender identity and gender dysphoria.

197. In July 2020, after Susan began the onset of puberty, the pediatric endocrinologist started Susan on a puberty delaying medication called Lupron as medically necessary treatment for Susan's gender dysphoria. The medication, which Medicaid has been covering, prevents Susan from developing secondary sex characteristics consistent with male puberty. According to the pediatric endocrinologist, it is medically necessary for Susan to receive a Lupron injection every three months in order for her to live authentically in a manner consistent with her gender identity and to treat her gender dysphoria. By preventing the physical manifestations that accompany male puberty, Susan is also able to avoid negative social and emotional consequences associated with her being forced to develop the characteristics aligned with a gender with which she does not identify.

198. When Susan learned that the puberty delaying medication was necessary to suppress male puberty, she was happy at the prospect. There is nothing worse in Susan's mind than male puberty; she describes it as a "nightmare."

199. Susan's pediatric endocrinologist is currently monitoring Susan to determine when it would be medically appropriate for her to begin hormone therapy. Susan is very eager to go through female puberty. At this point, the pediatric endocrinologist thinks that Susan could be ready to start hormone therapy in a year or two.

200. In August 2021, the Does' therapist retired from her practice. In November 2021, Susan began seeing another therapist, who is a Licensed Clinical Social Worker. Like the first therapist, the second therapist diagnosed Susan with gender dysphoria. The second therapist has further supported Susan in managing the symptoms of her dysphoria.

201. In light of Defendants' adoption of the Challenged Exclusion, the Does understand that Florida's Medicaid program will no longer cover Lupron for Susan as treatment for her gender dysphoria. The Challenged Exclusion will also prohibit Medicaid from covering hormone therapy as treatment for Susan's gender dysphoria when Susan is ready to begin the treatment, per the medical guidance of her pediatric endocrinologist.

202. Susan is due to have her next Lupron injection on October 3, 2022. Due to the Challenged Exclusion, Medicaid will refuse to pay for the medically necessary Lupron injection when it is needed.

203. Jane and John worry about the potential physical and mental health consequences of depriving Susan of the medically necessary treatment recommended by her doctors. Not providing such treatment is not an option for them. For Jane and John, providing Susan with the medical treatment for gender dysphoria that she requires is necessary to ensure her health and well-being.

204. If Susan had to stop taking Lupron and go through male puberty as a result of the Challenged Exclusion, she would be devastated. Susan has been living as a girl in every aspect of her life since 2017. Her legal name was changed to her current affirmed name in 2018, and in 2020, her birth certificate was amended to reflect that she is female.

205. If Susan were no longer able to access the medical care that she needs to align her body with her gender identity, Susan's mental health would suffer tremendously. Susan would not want to leave the house, and Jane and John fear that she might engage in self-harm. Going through male puberty would be torture for Susan. It would also be agony for Jane and John to watch Susan suffer needlessly when this could be easily eliminated with what they understand to be effective medical care for treating their daughter's gender dysphoria.

206. Through their experience with Susan's medical treatment and extensive conversations with her medical providers over the past five years, Jane and John understand that gender-affirming treatment is medically necessary, safe, and effective treatment for Susan's gender dysphoria.

207. Unlike Susan, Jane and John receive their health coverage through John's employer-provided health plan.

208. While the Does can add Susan to John's health plan, they cannot do so until the open enrollment period near the end of the year, and Susan's coverage

would not start before January 1, 2023. Thus, given her need for her next Lupron shot in early October 2022, this is not a feasible solution.

209. In any event, as a child adopted out of foster care, Susan is entitled to have her medical needs covered by Medicaid and Jane and John should not have to move Susan to John's employer-provided health plan in order for her to continue receiving medically necessary care.

210. With Medicaid no longer covering Susan's Lupron treatment, Jane and John will have no choice but to try to pay for her upcoming three-month Lupron injection out of pocket. Based on their research, the retail price for a single Lupron shot is roughly $11,000. As the parents of two children with only one income, Jane and John do not have sufficient resources to provide this care without sacrifice. Jane and John would have to take on debt to pay for Susan's puberty delaying medication and it would be a hardship for them.

211. Even if the Does are able to add Susan to John's health plan, Susan's health eare would be more expensive for them, as they would have a $300 annual deductible for Susan and higher cost-sharing for Susan's gender-affirming care. These are costs they did not have prior to the Challenged Exclusion due to Medicaid's coverage of the medical treatment for Susan's gender dysphoria.

212. Jane and John not only worry about the multitude of harms that would be imposed on their family by the Challenged Exclusion, but also about the effect that Defendants' actions will have on other transgender people and their families.

213. The Does have begun considering moving out of state in order to protect their daughter from state-sponsored discrimination. Jane and John do not wish to move if it can be avoided, as, among other things, it could mean John having to switch jobs and separating Susan and their son from their long-term health care providers, friends, and family. That said, the health and wellbeing of their adolescent children are paramount to them.

214. The Does consider Defendants' decision to stop covering medically necessary gender-affirming medical care through Medicaid to be tragic and dehumanizing. They are concerned about the message the State of Florida is sending by excluding transgender people from Medicaid coverage to which they otherwise would be entitled simply because they are transgender.

215. Jane and John keep in touch with other families in the LGBTQ+ affirming foster care community and are concerned for the ability of some children to find foster and adoptive families because of the state's hostility toward LGBTQ+ people and concerns about being able to meet the health care needs of those children through Medicaid.

Plaintiff K.F.

216. K.F. is the 12-year-old son of Jade Ladue and stepson of Joshua Ladue.

217. Joshua has raised K.F. since he was three years old and K.F. considers and calls Joshua "dad."

218. Jade is a patient coordinator at a dental office, while Joshua receives Social Security Disability Insurance because he is diagnosed with venous malformation, a type of vascular condition that results from the veins in his leg having developed abnormally.

219. K.F., Jade, and Joshua all live in Sarasota County along with K.F.'s four siblings, ranging in age from five to sixteen years old. They moved to Florida from Massachusetts as a family in August 2020.

220. K.F. is transgender.

221. Because of K.F.'s age and the Ladue family's income, he is eligible for Medicaid. He has been eligible for and enrolled in the program since he and his family moved to Florida. Prior to the Ladue family's move, K.F. was enrolled in Massachusetts's Medicaid program.

222. Although K.F. was assigned female at birth, he has known he was a boy from a very young age. When he was 7 years old, he came out to his grandparents during a camping trip, telling them that he has known since he was four years old that he is a boy and was born in the wrong body. In looking back on K.F.'s

childhood, both Jade and Joshua see that K.F. was showing them that he was a boy well before that conversation K.F. had with his grandparents. K.F. always wanted to wear traditional boy clothes (no dresses or skirts), insisted on his hair being kept short, and loved to play shirtless with other boys in their neighborhood.

223. K.F. has never wavered about his gender identity.

224. As with all of their children before their pre-teen years, Joshua and Jade established strict limitations on K.F.'s consumption of television, movies, videos, and video games. At the age of seven, when K.F. came out as transgender, he had never heard of the concept of gender dysphoria, or transgender people, beyond his own experience, which be described first to his grandparents, and then to Jade and Joshua, as simply "being a boy."

225. After K.F. confided in his parents, Jade decided the next best step would be to locate a therapist who specializes in gender dysphoria. Soon after, K.F. had his first appointment with a Licensed Mental Health Counselor. After thorough evaluation, the therapist was the first to diagnose K.F. with gender dysphoria and made sure that Jade and Joshua understood K.F.'s diagnosis and walked them carefully through what they should expect as K.F. got older.

226. After K.F. began therapy, Jade joined a local PFLAG group, an organization which is dedicated to supporting, educating, and advocating for

LGBTQ+ people and their families. She joined the group because it was important to her and Joshua that they demonstrate to K.F. their commitment to supporting him.

227. K.F. was living fully in accordance with his male gender identity in every aspect of his home life and he wanted to be treated accordingly at school. Thus, when K.F. entered the second grade, K.F.'s therapist helped facilitate a meeting between Jade and his school administrators and teachers to talk about K.F.'s gender identity and what actions the school should take to ensure he was fully affirmed and supported as a boy with his classmates in the school environment.

228. Once K.F.'s licensed mental health provider gave her professional recommendation that it was appropriate for K.F. to begin seeing a pediatric endocrinologist, she referred K.F. to the Gender Multispecialty Service (GeMS) Program at Boston Children's Hospital, the first pediatric and adolescent transgender health program in the United States. K.F. had his first appointment with the GeMS Program on September 13, 2015. That first appointment was incredibly thorough, lasting over two hours, and was overall a very happy occasion. It was clear to Jade that K.F. would be receiving the best possible care and the team of providers confirmed everything that K.F.'s therapist had told them: that K.F. is a transgender boy and that his parents and extended family supporting him in his affirmation of his male gender identity was the best decision for his health and well-being.

229. GeMS continued K.F.'s therapy and started him with pediatric nurse practitioner. The nurse practitioner's role was to monitor K.F.'s hormone levels for the onset of puberty and assist with any future gender-affirming health care needs. K.F.'s care with GeMS continued until the family moved to Florida in August 2020.

230. Before the Ladue family moved, in the summer of 2020, K.F.'s medical providers determined that based on the onset of K.F.'s puberty, it was medically necessary for K.F. to receive his first puberty delaying medication. At the recommendation of K.F.'s medical providers, K.F. received a Supprelin implant, a form of puberty delaying medication which would prevent the onset of secondary sex characteristics typical of girls and women. K.F. received the implant on August 8, 2020, and it was fully covered by Massachusetts' Medicaid program.

231. According to K.F.'s former and current medical providers, it is medically necessary for K.F. to receive puberty delaying medication so that K.F. can live authentically in a manner consistent with his gender identity and to treat his gender dysphoria. By preventing the physical manifestations that would accompany the puberty of his sex assigned at birth, K.F. is also able to avoid negative social and emotional consequences associated with his being forced to develop secondary sex characteristics that do not align with his male gender identity.

232. As his parent, it is also important to Jade and Joshua that K.F. be able to choose with whom to disclose this deeply personal, private information about

himself. Because of the puberty delaying medication, K.F. has that option, and the inherent protection and privacy that it provides.

233. When Jade and Joshua decided to move their family to Florida, Jade researched programs in the state that offered the same or similar level of care afforded by GeMS. Finding a program that offers high quality gender-affirming care and that accepts Medicaid can be challenging. Fortunately, through that research, Jade found the Emerge Gender & Sexuality Clinic for Children, Adolescents and Young Adults based at Johns Hopkins All Children's Hospital (Johns Hopkins Gender Clinic) located in St. Petersburg, Florida.

234. Once they moved, K.F. initiated care with a doctoral-level pediatric nurse practitioner specializing in endocrinology at the Johns Hopkins Gender Clinic. In April 2022, K.F. received his second Supprelin implant which was fully covered by his Florida Medicaid plan.

235. K.F. typically visits the Johns Hopkins Gender Clinic every six months. Recently, however, K.F. has had more frequent visits because his medical provider is monitoring whether K.F.'s second implant is adequately suppressing puberty and there is a possibility that K.F. may need a different type of puberty delaying medication to suppress puberty and successfully continue his medical transition. K.F. has anotber appointment scheduled at the end of October 2022 to check in with K.F.'s medical provider.

236. K.F. is adamant that he does not want breasts and would eventually like to have facial hair and muscles. The idea of developing typically female secondary sex characteristics makes K.F. extremely anxious; he prays every night that his puberty delaying medication will be successful. Since K.F. came to understand and express the dysphoria he experienced resulting from his sex assigned at birth at an early age, Jade and Joshua were able to get him the mental health and medical treatment that was necessary, and as a result K.F. is perceived as and accepted by other people as male and very few people know he is transgender. Developing secondary sex characteristics typically associated with girls and women, instead of those aligned with his male gender identity, would be tremendously emotionally and physically painful for K.F.

237. In the event K.F.'s current implant is not effective, and because Florida Medicaid now excludes coverage of puberty delaying medication when used to treat gender dysphoria, the Ladues would have to pay out of pocket for Lupron Depot shots, the treatment K.F.'s medical provider has indicated would be the next step for K.F. Those monthly shots would cost between $1,000 to $2,000 per shot out of pocket. The Ladue family has limited income, and they are very worried because they would not be able to afford these treatments without Medicaid coverage.

238. K.F.'s medical providers have also told the Ladues that likely within the next year, when K.F. is fourteen years old, that it will be medically indicated for

him to begin hormone therapy (testosterone) at a dose appropriate to his age and body composition. K.F. is very excited about starting testosterone therapy. K.F. usually hates receiving shots but he told Jade he would be happy to take a monthly shot if it meant that he would experience the male puberty that is aligned with his gender identity, such as his voice deepening and growing facial hair.

239. Jade and Joshua are so grateful that K.F. was confident enough and felt safe to come out to them at such a young age. His identifying his gender dysphoria at a young age combined with a loving and supportive immediate and extended family means that they were able to ensure that K.F. received the health care appropriate for him as soon as possible. As a result, his gender dysphoria has been well managed.

240. While K.F. has always dealt with anxiety, before he came out, it was much worse. He experienced what Jade would describe as "night terrors" and had a persistent stomachache. The Ladues would get calls from K.F.'s school that he was not doing well and was often in the nurse's office. The Ladues went to doctors to determine the source of K.F.'s distress, but no one could identify what was causing the problem. After he had firmly established gender-affirming care with GeMS, K.F. became a completely different child; it was like night and day. He had a smile on his face, a light in his eye, and even a glow about him. His performance and

attendance in school improved, as did his peer relationships. Like any parent, Jade and Joshua were relieved to see their child happy and thriving.

241. K.F. has also begun the process of legal transition. He has legally changed his name and the family is currently in the process of having his gender marker changed on his birth certificate and records with the Social Security Administration.

242. Under the Challenged Exclusion, Medicaid will no longer cover puberty delaying medications for K.F. as treatment for his gender dysphoria. The Challenged Exclusion will also prohibit Medicaid from covering hormone therapy as a medically necessary treatment for K.F.'s gender dysphoria when K.F., pursuant to the medical expertise and recommendations of his physicians, is ready to begin that treatment.

243. Jade and Joshua are incredibly worried about the potential physical and mental health consequences of depriving K.F. the medically necessary treatment recommended by his health care providers. K.F. has been living as a boy in every aspect of his life--medically, legally, and socially--since 2016.

244. If he were no longer able to access the medication that aligns his body with his gender identity, K.F.'s mental health would suffer tremendously, and he would be devastated. Jade and Joshua fear that K.F., and the whole family with him, would go down a dark and scary road fast. For example, they fear that K.F. would

not leave his bedroom and he would refuse to go to school, or that he would cut off his communications with his friends, teammates, and teachers. Given how much his gender-affirming care has improved his life and mental health, Jade and Joshua can only assume that reversing that course of treatment would result in the unthinkable happening.

245. Because of these concerns, K.F. going without treatment is simply not an option for the Ladue family. They believe providing K.F. with the medical treatment for gender dysphoria that he requires is necessary to ensure his health and well-being.

246. The Ladue family is under 138% of the federal poverty limit; that is why their children, including K.F., qualify for Florida's Medicaid program. Whether it be paying for a different puberty delaying medication if K.F.'s provider determines the current implant is not working or beginning K.F.'s course of hormone therapy in the next year, the Ladue family simply does not have sufficient resources to provide K.F. the gender-affirming care he requires. They simply could not pay out of pocket for the cost of K.F.'s care.

247. Joshua receives his health insurance through Medicare. He cannot add K.F. to his health insurance. Jade has access to health care coverage for family members because of her job, but the cost of adding K.F. is unaffordable for their family.

248. Whilc Florida is their home, ultimately, the Laduc family will be forced to move if neccssary to protect their son's access to medication that is necessary for his health and well-being. Doing so would mean Jadc would have to find a new job, Joshua would have to establish his Soeial Security payment through a new field office, and the kids would bc uprooted and forced to start at new schools and make new friends.

249. In addition, the Ladues are Christian and just joined a church tbat they attend every Sunday. So far, they have felt very welcome and would be sad to break a tie with this faith community and the other communities and relationships they have established in Soutb Florida.

250. For K.F., this would be a particularly difficult and painful transition. K.F. is doing well academically, socially, and athletically. He is on the golf team at his school and he is looking forward to upcoming tryouts out for the basketball team in their town. It is awful for Jade and Joshua to even think that K.F. would have to end this partieipation and leave his teammates beeause Florida refuses to provide him with coverage for the medical treatment that he needs to live and thrive, medieal treatment that is available to many other cisgender young people, simply bccause K.F. is transgender.

CLAIMS FOR RELIEF

COUNT I
Deprivation of Equal Protection in Violation of the Fourteenth Amendment of the U.S. Constitution

(All Plaintiffs Against Defendant Simone Marstiller)

251. Plaintiffs reallege and incorporate by reference paragraphs 1 to 250 of this Complaint as though fully set forth herein.

252. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV, § 1.

253. Plaintiffs state this cause of action against Defendant Marstiller, in her official capacity, for purposes of seeking declaratory and injunctive relief, and to challenge her adoption and enforcement of the discriminatory Exclusion both facially and as applied to Plaintiffs.

254. Defendant Marstiller is a person acting under color of state law for purposes of 42 U.S.C. § 1983 and has acted intentionally in denying Plaintiffs equal protection of the law.

255. Under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, discrimination based on sex is presumptively unconstitutional and subject to heightened scrutiny.

256. Discrimination on the basis of nonconformity with sex stereotypes, transgender status, gender, gender identity, gender transition, and sex characteristics are all forms of discrimination on the basis of sex.

257. A person is defined as transgender precisely because of the perception that they contradict gender stereotypes associated with the sex they were assigned at birth. When a transgender person affirms their authentic gender, it inherently contradicts standard gender stereotypes expected of the individual based on their sex assigned at birth.

258. In addition, under the Equal Protection Clause of the Fourteenth Amendment, discrimination based on transgender status is presumptively unconstitutional and subject to strict, or at least heightened, scrutiny. Indeed, transgender people have suffered a long history of discrimination in Florida and across the country and continue to suffer such discrimination to this day; they are a discrete and insular group and lack the political power to protect their rights through the legislative process; they have largely been unable to secure explicit state and federal protections to protect them against discrimination; their transgender status bears no relation to their ability to contribute to society; and gender identity is a core, defining trait so fundamental to one's identity and conscience that a person cannot be required to abandon it as a condition of equal treatment.

259. By adopting and enforcing the Challenged Exclusion categorically excluding "services for the treatment of *gender* dysphoria," including "*[s]ex* reassignment surgeries" and any "procedures that alter primary or secondary *sexual* characteristics," Defendant Marstiller is engaging in constitutionally impermissible discrimination based on sex, including, *inter alia*, discrimination based on nonconformity with sex stereotypes and transgender status.

260. Through her duties and actions to design, administer, and implement the Challenged Exclusion, Defendant Marstiller has unlawfully discriminated—and continues to unlawfully discriminate—against Plaintiffs based on sex-related considerations.

261. The Challenged Exclusion treats Plaintiffs differently from other persons who are similarly situated.

262. Under the Challenged Exclusion, transgender Medicaid beneficiaries who require gender-affirming care are denied coverage for that medically necessary care, while other Medicaid participants can access the same care as long as it is not required for the treatment of gender dysphoria, i.e., gender transition.

263. The Challenged Exclusion on its face and as applied to Plaintiffs deprives transgender Medicaid beneficiaries of their right to equal protection of the laws and stigmatizes them as second-class citizens, in violation of the Equal Protection Clause of the Fourteenth Amendment.

264. Defendants' promulgation and continued enforcement of the Challenged Exclusion did not, and does not, serve any rational, legitimate, important, or compelling state interest. Rather, the Challenged Exclusion serves only to prevent Plaintiffs and other transgender Medicaid beneficiaries from obtaining medically necessary medical care and services to treat their gender dysphoria, complete their gender transition, and live as their authentic selves.

265. As a direct and proximate result of the discrimination described above, Plaintiffs have suffered injury and damages, including mental pain and suffering and emotional distress. Without injunctive relief from Defendants' discriminatory Challenged Exclusion of coverage for gender-affirming care, Plaintiffs will continue to suffer irreparable harm in the future.

COUNT II
Discrimination on the Basis of Sex in Violation of Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116
(All Plaintiffs Against AHCA)

266. Plaintiffs reallege and incorporate by reference paragraphs 1 to 250 of this Complaint as though fully set forth herein.

267. Section 1557 of the ACA, 42 U.S.C. § 18116, provides, in relevant part that, "an individual shall not, on the ground prohibited under ... title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681, et seq.)"—which prohibits discrimination "on the basis of sex"—"be excluded from participation in, be denied

the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance."

268. Discrimination on the basis of nonconformity with sex stereotypes, transgender status, gender, gender identity, gender transition, and sex characteristics are all forms of discrimination encompassed by the prohibition of discrimination on the basis of sex under Section 1557.

269. Defendant AHCA receives federal financial assistance such that it is a "covered entity" for purposes of Section 1557 of the ACA. The Centers for Medicare & Medicaid Services ("CMS"), operating within HHS, provide federal financial assistance to AHCA for the state's participation in the Medicaid program. Indeed, Defendant AHCA has a published Notice of Nondiscrimination Policy on its website, stating that the "This Notice is provided as required by … Section 1557 of the Affordable Care Act and implementing regulations."

270. A covered entity, such as Defendant AHCA, cannot provide or administer health care coverage which contains a categorical exclusion of coverage for gender-affirming health care, or otherwise impose limitations or restrictions on coverage for specific health services related to gender transition if such limitation or restriction results in discrimination on the basis of sex.

271. Plaintiffs have a right under Section 1557 to receive Medicaid coverage through AHCA free from discrimination on the basis of sex, sex characteristics, gender, nonconformity with sex stereotypes, transgender status, or gender transition.

272. By categorically excluding "services for the treatment of *gender* dysphoria," including "*[s]ex* reassignment surgeries" and any "procedures that alter primary or secondary *sexual* characteristics," Defendant AHCA has discriminated against Plaintiffs on the basis of sex in violation of Section 1557 and has thereby denied Plaintiffs the full and equal participation in, benefits of, and right to be free from discrimination in a health program or activity.

273. As a result of the Challenged Exclusion, Plaintiffs have and will continue to suffer harm. By knowingly and intentionally offering coverage to Plaintiffs that discriminates on the basis of sex, Defendant AHCA has intentionally violated the ACA, for which Plaintiffs are entitled to injunctive relief, compensatory and consequential damages, and other relief.

274. Without injunctive relief from Defendants' discriminatory Challenged Exclusion of coverage for gender-affirming care, Plaintiffs will continue to suffer irreparable harm in the future.

COUNT III
Violation of the Medicaid Act's EPSDT Requirements,
42 U.S.C. §§ 1396a(a)(10)(A), I396a(a)(43)(C), I396d(a)(4)(B), and 1396d(r)(5)
(Plaintiffs Brit Rothstein, Susan Doe, and K.F. Against Defendant Marstiller)

275. Plaintiffs reallege and incorporate by reference paragraphs 1 to 250 of this Complaint as though fully set forth herein.

276. The Medicaid Act mandates that states provide Early and Periodic Screening, Diagnostic and Treatment ("EPSDT") services, which include all services necessary to "correct or ameliorate" a physical or mental health condition, to Medicaid beneficiaries under age 21. 42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(43)(C), 1396d(a)(4)(B), 1396d(r)(5).

277. The Challenged Exclusion, and Defendants' refusal, based on the Challenged Exclusion, to provide coverage for services for the treatment of gender dysphoria to Plaintiffs Brit Rothstein, Susan Doe, and K.F., and transgender Medicaid beneficiaries under age 21, violates the Medicaid Act's EPSDT requirements, 42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(43)(C), 1396d(a)(4)(B), and 1396d(r)(5), which are enforceable by Plaintiffs under 42 U.S.C. § 1983.

COUNT IV
Violation of the Medicaid Act's Comparability Requirements,
42 U.S.C. § 1396a(a)(10)(B)(i)

(All Plaintiffs Against Defendant Marstiller)

278. Plaintiffs reallege and incorporate by reference paragraphs 1 to 250 of this Complaint as though fully set forth herein.

279. The Medicaid Act's Comparability Requirements, 42 U.S.C. § 1396a(a)(10)(B)(i), require that the "medical assistance made available to [eligible individuals] shall not be less in amount, duration, or scope than the medical assistanee made available to" other eligible individuals.

280. The Challenged Exelusion, and Defendants' refusal, based on the Challenged Exclusion, to provide coverage for services for the treatment of gender dysphoria to Plaintiffs and other transgender Medicaid beneficiaries, while covering the same services for other Florida Medicaid beneficiaries with different diagnoses, violate the Medicaid Act's Comparability Requirements, 42 U.S.C. § 1396a(a)(10)(B)(i), which is enforceable by Plaintiffs under 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respeetfully request that this Court enter judgment in their favor and against Defendants on all claims, as follows:

A. Issue preliminary and permanent injunctions prohibiting Defendants from any further enforcement or application of the Challenged Exclusion and directing Defendants and their agents to provide Medicaid coverage for the medically necessary care for the treatment of gender dysphoria without regard to the Challenged Exclusion;

B. Enter a declaratory judgment that the Challenged Exclusion, which categorically excludes coverage for medically necessary care for the treatment of gender dysphoria, both on its face and as applied to Plaintiffs:

i. Violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution by discriminating against Plaintiffs and all similarly situated individuals on the basis of sex, including transgender status, nonconformity with sex stereotypes, sex characteristics, gender, gender identity, sex assigned at birth, and gender transition;

ii. Violates Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116, by discriminating against Plaintiffs and all similarly situated individuals on the basis of sex (including transgender status, nonconformity with sex stereotypes, sex characteristics, gender, gender identity, sex assigned at birth, and gender transition);

iii. Violates the Medicaid Act's EPSDT Requirements, 42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(43)(C), 1396d(a)(4)(B), and 1396d(r)(5); and

iv. Violates the Medicaid Act's Comparability Requirements, 42 U.S.C. § 1396a(a)(10)(B)(i);

C. Waive the requirement for the posting of a bond of security for the entry of temporary and preliminary relief;

D. Award the declaratory and injunctive relief requested in this action against Defendants' officers, agents, servants, employees, and attorneys, as well as any other persons who are in active concert or participation with them;

E. Award compensatory and consequential damages to Plaintiffs in an amount that would fully compensate each of them for: (1) the harms to their short- and long-term health and well-being from being denied access to medically necessary health care as a result of the Challenged Exclusion and its application to them; (2) their economic losses; and (3) all other injuries that have been caused by Defendants' acts and omissions alleged in this Complaint;

F. Award Plaintiffs their reasonable attorneys' fees, costs, and expenses under 42 U.S.C. § 1988 or other applicable statutes; and

G. Award such other and further relief as the Court may deem just and proper.

* * * * *

Respectfully submitted this 7th day of September 2022.

PILLSBURY WINTHROP SHAW PITTMAN, LLP

By: */s/ Jennifer Altman*
Jennifer Altman (Fl. Bar No. 881384)
Shani Rivaux** (Fl. Bar No. 42095)
600 Brickell Avenue, Suite 3100
Miami, FL 33131
(786) 913-4900
jennifer.altman@pillsbury.com
shani.rivaux@pillsbury.com

William C. Miller*
Gary J. Shaw*
1200 17th Street N.W.
Washington, D.C. 20036
(202) 663-8000
william.c.miller@pillsburylaw.com
gary.shaw@pillsburylaw.com

Joe Little*
500 Capitol Mall, Suite 1800
Sacramento, CA 95814
(916) 329-4700
joe.little@pillsburylaw.com

NATIONAL HEALTH LAW PROGRAM

By: */s/ Abigail Coursolle*
Abigail Coursolle*
3701 Wilshire Boulevard, Suite 315
Los Angeles, CA 90010
(310) 736-1652
coursolle@healthlaw.org

Catherine McKee*
1512 E. Franklin Street, Suite 110
Chapel Hill, NC 27541
(919) 968-6308
mckee@healthlaw.org

LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.

By: */s/ Omar Gonzalez-Pagan*
Omar Gonzalez-Pagan*
120 Wall Street, 19th Floor
New York, NY 10005
(212) 809-8585
ogonzalez-pagan@lambdalegal.org

Carl S. Charles*
1 West Court Square, Suite 105
Decatur, GA 30030
(404) 897-1880
ccharles@lambdalegal.org

SOUTHERN LEGAL COUNSEL, INC.

By: */s/ Simone Chriss*
Simone Chriss (Fl. Bar No. 124062)
Chelsea Dunn (Fl. Bar No. 1013541)
1229 NW 12th Avenue
Gainesville, FL 32601
(352) 271-8890
Simone.Chriss@southernlegal.org
Chelsea.Dunn@southernlegal.org

FLORIDA HEALTH JUSTICE PROJECT

By: */s/ Katy DeBriere*
Katy DeBriere (Fl. Bar No. 58506)
3900 Richmond Street
Jacksonville, FL 32205
(352) 278-6059
debriere@floridahealthjustice.org

* *Application for admission pro hac vice forthcoming.*
** *Application for admission to the Northern District Court forthcoming.*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

August Dekker, legally known as Kori Dekker; Brit Rothstein; Susan Doe, a minor by and through her parents and next friends, Jane Doe and John Doe; and K.F., a minor, by and through his parent and next friend, Jade Ladue

(b) County of Residence of First Listed Plaintiff Hernando County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Simone Chriss and Chelsea Dunn, Southern Legal Counsel, 1229 NW 12th Ave, Gainesville, FL 32601, (325) 271-8890; Katy DeBriere, Florida Health Justice Project, 3900 Richmond St., Jacksonville, FL 32205, (352) 278-6059; Jennifer Altman, Shani Rivaux, Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury"), 600 Brickell Ave., Ste. 3100, Miami, FL 33131, (786) 913-4900; William C. Miller, Gary J. Shaw, Pillsbury, 1200 17th St. N.W., Washington, D.C., 20036, (202) 663-8000; Joe Little, Pillsbury, 500 Capitol Mall, Ste. 1800, (916) 329-4700; Abigail Coursolle, National Health Law Program ("NHeLP"), 3701 Wilshire Blvd., Ste. 315, Los Angeles, CA, 90010, (310) 736-1652; Catherine McKee (NHeLP), 1512 E. Franklin St., Chapel Hill, N.C., (919) 968-6308; Omar Gonzalez-Pagan, Lambda Legal Defense and Education Fund, Inc. ("Lambda Legal"), 120 Wall St., 19th Floor, New York, NY 10005, (212) 809-8585; Carl S. Charles, Lambda Legal, West Court Square, Ste. 105, Decatur, GA 30030, (404) 897-1880

DEFENDANTS

Simone Marstiller, in her official capacity as Secretary of the Florida Agency for Health Care Administration; and Florida Agency for Health Care Administration

County of Residence of First Listed Defendant Leon County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☑ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☑ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
42 U.S.C. 1983; 42 U.S.C. 18116

Brief description of cause:
Challenging Defendant's exclusion of Medicaid coverage for gender affirming care

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☑ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:

JUDGE Honorable Mark E. Walker DOCKET NUMBER 4:20-cv-00020

DATE 9/7/2022 SIGNATURE OF ATTORNEY OF RECORD /s/ Jennifer Altman

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

MEMORANDUM

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

Through: Dylan de Kervor, Senior Advisor, Office for Civil Rights

From: Vatsala Kumar, Intern, Office for Civil Rights

Date: August 19, 2022

Re: **Florida Agency for Health Care Administration**

I. Action Requested

***

II. Procedural History

(b)(5)

III. Background

A. History and Other Related Actions

While this memorandum focuses on actions taken by FAHCA—revisions to Florida Administrative Code 59G-1.050, as described *infra*—some history and related actions in Florida may prove helpful in providing context.

In April 2022, the Florida Department of Health (FDOH) issued guidance stating that minors should not be provided with gender-affirming care, in opposition to an HHS fact sheet. Off. of State Surgeon Gen., Fla. Dep't of Health, Treatment of Gender Dysphoria for Children and Adolescents (Apr. 20, 2022); *see also* Off. of Pop. Affs., U.S. Dep't of Health & Human Servs., Gender-Affirming Care and Young People (Mar. 2022). The same day, the Secretary of FAHCA requested that the Florida Medicaid program conduct a complete review to

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[1] *See, e.g.*, Kiara Alfonseca, *Florida Battles Federal LGBTQ Protections*, ABC News (July 30, 2022); Jacob Ogles, *Florida Pushes Forward to Ban Gender-Affirming Care for Medicaid Users*, Advocate (July 12, 2022); Sarah Mueller, *A Hearing on Banning Florida Medicaid Payments for Gender-Affirming Care Pits Religion Against Science*, WFSU (July 9, 2022).

[2] 48 Fla. Admin. Reg. 2461–62 (June 17, 2022).

[3] A public hearing held on the proposed rule is viewable online. *See* 7/8/22 Agency for Health Care Administration Hearing on General Medicaid Policy Rule, Fla. Channel (July 8, 2022).

[4] Fla. Admin. Code R. 59G-1.050 (2022).

determine whether Florida Medicaid should provide coverage for gender-affirming care. Letter from Simone Marstiller to Tom Wallace (Apr. 20, 2022).

In June 2022, Florida Medicaid issued a report finding that gender-affirming care has not been proven to be safe or effective and is "experimental and investigational." Fla. Medicaid, Generally Accepted Professional Medical Standards Determination on the Treatment of Gender Dysphoria (2022). Since services must be "medically necessary" to be covered by Florida Medicaid, including being in line with professional medical standards and not experimental or investigational, this report opened the door for the FAHCA modifications to their Medicaid policies. Fla. Agency for Health Care Admin., *Florida Medicaid: Definitions Policy* 7 (2017).

Other agencies in Florida are also using this report as justification for limitations and prohibitions on gender-affirming care. In late July 2022, FDOH submitted a petition to the Florida Board of Medicine urging them to bar physicians from providing gender-affirming care to minors. *See Florida Medical Board to Weigh Blocking Treatments for Transgender Youth*, CBS Miami (Aug. 1, 2022). The petition relied on both FDOH's April 2022 guidance as well as the Florida Medicaid June report. *Id.* On August 5, 2022, the Florida Board of Medicine held a meeting to consider the petition. Arek Sarkissian, *Florida Medical Board Moves to Block Gender Affirming Treatments for Minors*, Politico (Aug. 5, 2022). The meeting included a public comment period, with testimony from physicians and community organizers. *Id.* The Board voted to begin the process of updating their rules during the meeting. *Id.* The change would create a standard of care prohibiting individuals under the age of eighteen from receiving gender-affirming surgeries and hormones; it would also mandate a consent form and waiting period for older individuals. *Id.*; CBS Miami, *supra*.

B. FAHCA Proposed Rule and Finalization

In June 2022, FAHCA proposed an amendment to Florida Administrative Code Rule 59G-1.050, the General Medicaid Policy. 48 Fla. Admin. Reg. 2461–62 (June 17, 2022). The 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.

Id. As rulemaking authority for promulgating this amendment, the agency cites Florida Statute § 409.919 and § 409.961. 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).

FAHCA held a public hearing on this proposed rule on July 8, 2022. *See* 7/8/22 Agency for Health Care Administration Hearing on General Medicaid Policy Rule, Fla. Channel (July 8, 2022). Fifty commenters spoke, eight of whom opposed the rule. Many supporters of the rule focused on concerns surrounding gender-affirming care for youth, despite the rule's applicability to recipients of all ages. The agency also accepted written comments, due on July 11, 2022, and 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). While the majority of in-person comments supported the rule, most publicly available written comments oppose it. Among those opposing the rule are a group of professors from Yale School of Medicine, Disability Rights Florida, Endocrine Society, and the Florida Policy Institute. *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); Letter from Peter P. Sleasman to Simone Marstiller re Proposed Amendments to Rule 59G-1.050; Letter from Ursula Kaiser to Agency for Health Care Administration re 59G-1.050: General Medicaid Policy (July 8, 2022); Letter from Anne Swerlick to Thomas Wallace re Proposed Rule 59G-1.050, Florida Administrative Code (July 7, 2022).

On August 11, 2022, FAHCA finalized the proposed rule. *See* Fla. Admin. Code R. 59G-1.050 (2022). The new language becomes effective on August 21, 2022. The Florida Health Justice Project and the National Health Law Program joined other organizations in issuing a statement condemning the rule. Lambda Legal, Press Release, LGBTQ and Health Groups Denounce Florida's Adoption of Anti-Transgender Health Care Rule (Aug. 11, 2022).

IV. Jurisdictional Information

A. Legal Authority

Section 1557, 42 U.S.C. § 18116, and its implementing regulation, 45 C.F.R. Part 92, prohibit discrimination on the bases of race, color, national origin, sex, age, or disability in certain health programs and activities. Section 1557 provides that, except as provided in Title I of the ACA, an individual shall not, on the grounds prohibited under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, or Section 504 of the Rehabilitation Act of 1973, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance or under any program or activity that is administered by an Executive Agency or any entity established under Title I of the ACA.

OCR is responsible for investigating complaints and conducting compliance reviews to determine if recipients of HHS funding operate their programs and activities in compliance with Title IX and Section 1557. HHS has the authority, where appropriate, to negotiate and secure voluntary compliance agreements.

FAHCA is a recipient of Federal financial assistance through its participation in Medicaid, Title XIX of the Social Security Act of 1965, 42 U.S.C. § 1396 *et seq*. FAHCA and the Florida Medicaid program are subject to Section 1557 and all related antidiscrimination laws.

B. Legal Theory

Courts have struck down similar Medicaid exclusions in other states, holding that such exclusions constitute discrimination on the basis of sex. The district court in *Flack v. Wisconsin Department of Health Services* further noted that "any attempt . . . to contend that gender-confirming care—including surgery—is inappropriate, unsafe, and ineffective is unreasonable." *Flack v. Wis. Dep't of Health Servs.*, 395 F. Supp. 3d 1001, 1014–15, 1018 (W.D. Wis. 2019); *see also Fain v. Crouch*, No. 20-0740, 2022 WL 3051015 (S.D. W.Va. Aug. 2, 2022) (holding that a West Virginia Medicaid exclusion of coverage for gender-affirming surgical care is a preclusion based on gender identity, which "invidiously discriminates on the basis of sex and transgender status").

Discrimination on the basis of sex can consist of either disparate treatment or disparate impact. *See* U.S. Dep't of Just., Title IX Manual (2021). OCR will consider pursuing this case under a disparate treatment claim. Such a claim must include proof of discriminatory intent—proof that the decision-maker decided to treat recipients differently on the basis of sex. *Id.*
While *malicious* intent is not required for a disparate treatment claim, *id.*, there is preliminary evidence that FAHCA and other Florida officials showed animus in promulgating the Medicaid exclusion, including statements by Florida officials. For example, Florida's surgeon general Joseph Ladapo has said that gender-affirming treatments are "about injecting political ideology into the health of our children." Kiara Alfonseca, *Florida to Ban Gender-Affirming Care Under Medicaid for Transgender Recipients*, ABC News (Aug. 12, 2022). Florida Governor Ron DeSantis has publicly ridiculed transgender individuals, referring to them as inanimate objects and mocking the idea that transgender individuals can get pregnant. Michael Moline, *DeSantis Spreads Misinformation About Transgender People in Public Appearance*, Fla. Phoenix (May 18, 2022). DeSantis has also likened gender-affirming care to castration and said that doctors "need to get sued" for providing gender-affirming treatments. Alfonesca, *supra*. Quentin Van Meter, a physician who has participated in Florida's actions and has been cited throughout Florida's justifications, has said that gender-affirming care is an "experiment" on children and a "monumental epidemic." Sarkissian, *Florida Medical Board Moves*, *supra*; Dara Kam, *A Florida Medical Board Advances a Plan That Would Ban Treatments for Transgender Youths*, WUSF (Aug. 6, 2022). Dr. Van Meter is the president of a conservative advocacy group which has been categorized by the Southern Poverty Law Center as a hate group, *see American College of Pediatricians*, Southern Poverty L. Ctr., (last visited July 22, 2022), and has been previously disqualified as an expert in court. Stephen Caruso, *A Texas Judge Ruled This Doctor Was Not an Expert. A Pennsylvania Republican Invited Him to Testify on Trans Health Care*, Penn. Capital-Star (Sept. 15, 2020).

These statements, alongside the FAHCA's actions and justifications, show that the intent behind this decision was highly political and medically unfounded. The exclusion goes against public opinion and medical recommendations, as many individuals and organizations have pointed out. *See, e.g.*, Meredithe McNamara et al., *A Critical Review of the June 2022 Florida Medicaid Report on the Medical Treatment of Gender Dysphoria* (July 8, 2022); Sarkissian, *Florida*

Medical Board Moves, *supra* (quoting University of Florida professor and Chief of Pediatric Endocrinology Michael J. Haller who called the Florida Medical Board proposal a "political maneuver"); 7/8/22 Agency for Health Care Administration Hearing, *supra* (recording of July 8 hearing wherein some commenters spoke against FAHCA rule); Letter from Anne L. Alstott, *supra*; Letter from Peter P. Sleasman, *supra*; Letter from Ursula Kaiser, *supra*; Equality Fla., Press Release, Equality Florida Decries Proposed Rule to Eliminate Medicaid Coverage for Gender Affirming Care (June 17, 2022); Fla. Coal. for Trans Liberation, *Stop Rule 59G-1.050* (2022); Letter from Anne Swerlick, *supra*.

If direct proof of discriminatory intent is unavailable, OCR can instead utilize the *McDonnell-Douglas* burden-shifting framework to evaluate disparate treatment. This includes showing (1) that the affected individuals are members of a protected class; (2) that the affected individuals applied and were eligible for a federally-funded health program or activity; (3) that the affected individuals were denied participation because of their sex despite their eligibility; and (4) that the covered entity allowed participation to members of another sex. U.S. Dep't of Just., *supra*.

V. Proposed Action

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VI. Reasons to Take Action in this Matter

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Transgender and nonbinary individuals already face heightened barriers in accessing medical care and prohibiting coverage for gender-affirming procedures under Medicaid in Florida will significantly impact transgender Floridians who cannot afford private insurance. Medicaid recipients in Florida may not be aware of OCR and their rights, and the stigma surrounding gender-affirming care may keep individuals from filing complaints with OCR. While Florida organizations are preparing to file suit against FAHCA, *see* Sarkissian, *Groups to Sue*, *supra*, litigation is slow, and many Floridians will be harmed by these policies in the meantime. OCR can proactively evaluate these claims and consider whether the actions contravene federal civil rights laws, remedying the situation as necessary.

*

I. INTRODUCTION

Medicaid is a federally- and state-funded program which provides health coverage for low-income individuals in the United States.[1] Medicaid is managed by each state individually, and while states are not required to participate in the program, all states currently do.[2] There are federal mandates for Medicaid programs, but states have flexibility in creating policies and criteria for their programs.[3]

One such federal requirement is § 1557 of the Affordable Care Act (ACA).[4] This section prohibits any "health program or activity" which receives "[f]ederal financial assistance" from discriminating against any individual on the basis of race, color, national origin, sex, age, or disability.[5]

Since at least 2010, some states have issued regulations and policies excluding gender-affirming procedures[6] from Medicaid coverage.[7] Several lawsuits have been filed challenging these exclusions, alleging that they violate § 1557.[8] This memorandum will discuss recently-resolved and currently-pending litigation surrounding these issues, focusing on six states: Wisconsin, West Virginia, Georgia, Arizona, New York, and Alaska.[9]

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[1] *See generally* Social Security Amendments of 1965 § 121(a), 42 U.S.C. § 1396; Centers for Medicare & Medicaid Servs., *Program History*, MEDICAID.GOV, https://www.medicaid.gov/about-us/program-history/index.html [https://perma.cc/87GA-73VP] (last visited July 16, 2021).

[2] *Id.*

[3] Centers for Medicare & Medicaid Servs., *Eligibility*, MEDICAID.GOV, https://www.medicaid.gov/medicaid/eligibility/index.html [https://perma.cc/PJ54-9DWQ] (last visited July 16, 2021).

[4] Patient Protection and Affordable Care Act § 1557, 42 U.S.C. § 18116 (2010); U.S. Dep't of Health & Human Servs., *Section 1557 of the Patient Protection and Affordable Care Act*, HHS.GOV, https://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html [https://perma.cc/MN6P-WVJK] (last visited July 16, 2021).

[5] Patient Protection and Affordable Care Act § 1557, 42 U.S.C. § 18116 (2010).

[6] This memorandum uses the phrase "gender-affirming procedures" to mean any procedures that are undertaken with the goal of aligning a transgender individual's physical characteristics with their gender. This can include (but is not limited to) facial surgery, genital surgery, breast augmentation surgery, mastectomies, hormone therapy, puberty blockers, and voice therapy. Cases sometimes refer to these procedures, among other names, as "gender confirmation surgery" or "sex reassignment surgery." *See* Madeline B. Deutsch, *Overview of Gender-Affirming Treatments and Procedures*, UCSF TRANSGENDER CARE (June 17, 2016), https://transcare.ucsf.edu/guidelines/overview [https://perma.cc/X9SB-NKKD]; *Gender Confirmation Procedures*, UCHICAGO MEDICINE, https://www.uchicagomedicine.org/conditions-services/plastic-reconstructive-surgery/gender-confirmation-surgery/procedures [https://perma.cc/WCP4-S7NU] (last visited July 16, 2021); *Gender Affirmation (Confirmation) or Sex Reassignment Surgery*, CLEVELAND CLINIC (May 3, 2021), https://my.clevelandclinic.org/health/treatments/21526-gender-affirmation-confirmation-or-sex-reassignment-surgery [https://perma.cc/4WQ3-EXCK].

[7] CHRISTY MALLORY & WILLIAM TENTINDO, UCLA SCHOOL OF LAW WILLIAMS INSTITUTE, MEDICAID COVERAGE FOR GENDER-AFFIRMING CARE 6–8 (Oct. 2019), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Medicaid-Gender-Care-Oct-2019.pdf [https://perma.cc/F954-7VXF]; *see also Healthcare Laws and Policies: Medicaid Coverage for Transition-Related Care*, MOVEMENT ADVANCEMENT PROJECT (last updated June 30, 2021), https://www.lgbtmap.org/img/maps/citations-medicaid.pdf [https://perma.cc/F9SX-7HRR].

[8] *See, e.g.*, *Flack v. Wis. Dep't of Health Servs.*, 395 F. Supp. 3d 1001 (W.D. Wis. 2019); *Fain v. W. Va. Dep't of Health & Hum. Res.*, No. 3:20-cv-00740, 2020 WL 6688918 (S.D. W. Va. Nov. 12, 2020); *Thomas v. Ga. Dep't of Cmnty. Health*, No. 1:21-cv-02558-cap (N.D. Ga. June 24, 2021); *Hennessy-Waller v. Snyder*, No. 20-00445-TUC-SHR, 2021 WL 1192842 (D. Az. Mar. 30, 2021), *appeal docketed sub nom. D.H. v. Snyder*, No. 21-15668 (9th Cir. Apr. 19, 2021); *Cruz v. Zucker*, 195 F. Supp. 3d 554 (S.D.N.Y. 2016); *Being v. Crum*, No. 3:19-cv-00060 (D. Alaska Mar. 3, 2019); *see also* discussion *infra* Part II.

[9] The Iowa Court of Appeals heard a suit challenging a similar Iowa rule which prohibited Medicaid coverage for gender-affirming surgery, but that case focused exclusively on violations of the Iowa Civil Rights Act and the Iowa

II. CHALLENGES TO STATE MEDICAID BANS

a. Wisconsin (*Flack v. Wisconsin Department of Health Services*)

Wisconsin Administrative Code §§ DHS 107.03(23)–(24) denied coverage for medically prescribed gender-affirming surgery and related hormonal treatments under Wisconsin Medicaid.[10] The exclusions applied only to beneficiaries who were twenty-one and older; different provisions governed youth beneficiaries.[11] The plaintiffs in *Flack v. Wisconsin Department of Health Services*[12]—four adult transgender named plaintiffs who had been denied coverage[13]—challenged this regulation on behalf of themselves and a class of similarly-situated plaintiffs, alleging *inter alia* that it violated § 1557 of the ACA.[14]

The *Flack* plaintiffs argued that these exclusions violated § 1557 because they discriminated on the basis of sex.[15] In response, the Department made a "Spending Clause" argument, claiming that "Wisconsin could not have understood that Title IX would impose on it a new anti-discrimination requirement when this federal law passed" because "the Seventh Circuit did not hold that sexual orientation and transgender status discrimination were covered under Title VII and Title IX, respectively, until decades after the enactment of Title IX."[16] The court rejected this argument—calling it "[n]onsense"[17]—and found that § 1557 provides a private right of action and that this exclusion does discriminate on the basis of sex.[18]

The court in *Flack* also reaffirmed the value of gender-affirming procedures in its opinion. The court said unequivocally that "any attempt . . . to contend that gender-confirming care—including surgery—is inappropriate, unsafe, and ineffective is unreasonable."[19]

b. West Virginia (*Fain v. Crouch*)

In their class action complaint, and represented by Lambda Legal Defense and Education Fund, the plaintiffs in *Fain v. Crouch*[20] likewise challenged state health plan exclusions as discriminatory against transgender people.[21] The challenged exclusions in *Fain* excluded gender-affirming care for transgender

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Equal Access to Justice Act and did not consider § 1557 violations. *Good v. Iowa Dep't of Hum. Servs.*, 940 N.W.2d 792 (Iowa Ct. App. 2019). This memorandum will not expound on *Good*.

[10] *Flack v. Wis. Dep't of Health Servs.*, 395 F. Supp. 3d 1001, 1007 (W.D. Wis. 2019); *see also* Wis. Admin. Code § DHS 107.03 (2000). The Code excluded "[d]rugs, including hormone therapy, associated with transsexual surgery or medically unnecessary alteration of sexual anatomy or characteristics" and "[t]ranssexual surgery." *Flack*, 395 F. Supp. 3d at 1007. While "[t]ranssexual surgery" is not defined in the regulations, DHS "interprets it to mean any surgical procedure intended to treat gender dysphoria." *Id.*; *see also id.* at 1009–10 (detailing the procedures which are excluded).

[11] *Id.* at 1010.

[12] 395 F. Supp. 3d 1001 (W.D. Wis. 2019).

[13] *Id.* at 1010–13. The named plaintiffs were denied coverage for chest reconstructive surgery, orchiectomy, vaginoplasty, electrolysis, penectomy, and breast augmentation. *Id.*

[14] Other claims included violations of the Medicaid Act's Availability Provision, the Medicaid Act's Comparability Provision, and the Equal Protection Clause of the Fourteenth Amendment. *Id.* at 1015–23. This memorandum will not explore these claims (or similar claims in other cases), but focuses only on § 1557 claims.

[15] *Id.* at 1014–15.

[16] *Id.* at 1014.

[17] *Id.* (citing Preliminary Injunction Opinion & Order at 30, *Flack v. Wis. Dep't of Health Servs.*, 395 F. Supp. 3d 1001 (W.D. Wis. 2019), ECF No. 70)

[18] *Id.* at 1014–15.

[19] *Id.* at 1018.

[20] No. 3:20-cv-00740 (S.D. W. Va. Nov. 12, 2020).

[21] *See* Class Action Complaint at ¶¶ 61–62, *Fain v. Crouch*, No. 3:20-cv-00740 (S.D. W. Va. Nov. 12, 2020).

individuals from Medicaid coverage, "even though the same treatments are covered for cisgender people who are Medicaid participants."[22] The plaintiffs, two transgender men who filed on behalf of themselves and a class, were denied coverage for hormone therapy and mastectomies.[23] The plaintiffs argued that the West Virginia exclusions "deprive transgender people of essential, and sometimes life-saving, health care," and that they violate the Equal Protection Clause of the Fourteenth Amendment, the Comparability and Availability requirements of the Medicaid Act, and § 1557.[24]

The court first touched on the § 1557 arguments in rulings on motions to dismiss.[25] First, the defendants argued that this claim was barred under Eleventh Amendment immunity, which restricts the ability of individuals to file claims against states in federal court.[26] The plaintiff argued that § 1003 of the Civil Rights Remedies Equalization Act of 1986[27] "clearly and unambiguously conditioned federal Medicaid funding on states' waiver of immunity for nondiscrimination provisions."[28] This section says that states are not protected by the Eleventh Amendment when they violate "any . . . Federal statute prohibiting discrimination by recipients of Federal financial assistance."[29] The plaintiffs contended, and the court agreed, that that this clause incorporates § 1557.[30]

In ruling on the other motion to dismiss, the court again considered arguments against applying § 1557.[31] The defendants argued that the language "any health program or activity" within § 1557 was narrowed only to entities "principally engaged in the business of providing healthcare" by a 2020 rule, and thereby excluded health insurance issuers.[32] The plaintiffs argued that the 2020 rule does not control because § 1557 "unambiguously prohibits discrimination by [health insurance issuers] under its entire portfolio," and the court agreed.[33] The court found that, in context, "health program or activity" "necessarily includes health insurance issuers,"[34] and the use of the phrase "health program or activity" "does not mean that [Congress] intended to exclude entities from Section 1557" but rather that "Congress intended the provision to apply broadly."[35] The court denied the motion.[36]

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[22] *Id.* at ¶¶ 61–62.
[23] *Id.* at ¶¶ 68–105.
[24] *Id.* at ¶ 6.
[25] *See Fain v. Crouch*, 540 F. Supp. 3d 575 (S.D.W.Va. 2020) [hereinafter *Fain I*]; *Fain v. Crouch*, 545 F. Supp. 3d 338 (S.D.W.Va. 2021) [hereinafter *Fain II*].
[26] *Fain I*, 540 F. Supp. 3d at 581; *see also* U.S. CONST. amend. XI.
[27] 42 U.S.C. § 2000d-7(a)(1) ("A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal Court for a violation of section 504 of the Rehabilitation Act of 1973, title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, or the provisions of any other federal statute prohibiting discrimination by recipients of Federal financial assistance.").
[28] 42 U.S.C. § 2000d-7(a)(1); *Fain I*, 540 F. Supp. 3d at 581.
[29] 42 U.S.C. § 2000d-7(a)(1).
[30] *Fain I*, 540 F. Supp. 3d at 581 (citing *Kadel v. Folwell*, 446 F. Supp. 3d 1, 17 (M.D.N.C. 2020); *Boyden v. Conlin*, 341 F. Supp. 3d 979, 998 (W.D. Wis. 2018); *Esparza v. Univ. Med. Ctr. Mgmt. Corp.*, No. cv-17-4803, 2017 WL 4791185, at *9 (E.D. La. Oct. 24, 2017)). The court did note that "there is not yet controlling precedent" on this, but that "several district courts have held that the Residual Clause incorporates Section 1557." *Id.* at *3.
[31] *See generally Fain II*, 545 F. Supp. 3d 338 (S.D.W.Va. 2021).
[32] *Id.* at 340.
[33] *Id.* at 341.
[34] *Id.* at 342–43.
[35] *Id.*
[36] *Id.* at 343.

In August 2022, the court granted summary judgment in favor of plaintiffs, holding that the challenged exclusion "invidiously discriminates on the basis of sex and transgender status."[37] The court, noting that the *Bostock v. Clayton County*[38] standard is appropriate to determine whether a policy violates ACA § 1557, held that plaintiffs were subjected to discrimination on the basis of sex under the challenged exclusion.[39] The court said that "a transgender identity is inherent in an individual who suffers from gender dysphoria," and therefore "[t]ransgender status, and thus, this exclusion, cannot be understood without a reference to sex."[40] The court went on to distinguish this case from *Hennessy-Waller v. Snyder*,[41] discussed below, stating that it was "unpersuasive" in this case.[42] The court also held that the challenged exclusion violated the Equal Protection Clause of the Fourteenth Amendment and Title XIX of the Social Security Act.[43]

c. Arizona (*Hennessy-Waller v. Snyder*)

In *Hennessy-Waller v. Snyder*, plaintiffs were two minors challenging the Arizona Medicaid program, which excluded numerous procedures.[44] The plaintiffs also sought class certification in their complaint.[45] The plaintiffs' healthcare providers recommended testosterone and male chest reconstruction surgery, both of which were excluded under the Arizona rule.[46] The plaintiffs challenged these exclusions under Equal Protection, Title XIX of the Social Security Act, and ACA § 1557.[47]

The court considered the plaintiffs' Equal Protection Clause argument alongside their § 1557 argument.[48] The court declined to read *Bostock* as extending to Medicaid plans, and distinguished other cases on similar grounds.[49] The court also distinguished this case from *Flack*, finding that since the exclusion here "only excludes gender reassignment *surgery*—it does not exclude coverage for other treatments for gender dysphoria such as hormone therapy," and because the exclusion in *Flack* "involved *adult* plaintiffs—not minors such as the plaintiffs here," the cases were distinct.[50] Finally, the court held that although the plaintiffs "would be denied coverage for the surgery" under the challenged exclusion, "they have not clearly shown that such a denial would be made on the basis of sex."[51] The court said that the plaintiffs "have not clearly shown the surgery they seek is medically necessary for them, that it is a safe and effective treatment for gender dysphoria in adolescents," or that the Arizona exclusions violate § 1557, the Medicaid Act, or the Equal Protection Clause.[52] After additionally noting that "irreparably harm is

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[37] Memorandum Opinion and Order at 30, *Fain v. Crouch*, No. 20-cv-00740 (S.D. W.Va. Aug. 2, 2022), ECF No. 271.
[38] 140 S. Ct. 1731 (2020).
[39] Memorandum Opinion and Order, *supra* note 37, at 23.
[40] *Id.* (citing *Bostock*, 140 S. Ct. at 1746).
[41] 529 F. Supp. 3d 1031 (D. Ariz. Mar. 30, 2021), *aff'd sub nom. Doe v. Snyder*, 28 F. 4th 103 (9th Cir. 2022).
[42] Memorandum Opinion and Order, *supra* note 37, at 24.
[43] *Id.* at 30.
[44] *Hennessy-Waller*, 529 F. Supp. 3d at 1035.
[45] *Id.*
[46] *Id.* The Arizona Medicaid exclusions include "[i]nfertility services," "gender reassignment surgeries," "[p]regnancy termination counseling services," "[p]regnancy terminations," "[s]ervices or items furnished solely for cosmetic purposes," and "[h]ysterectomies unless determined medically necessary." *Id.* (citing Ariz. Admin. Code R9-22-205(B)(4)).
[47] *Id.*
[48] *Id.* at 1043.
[49] *Id.* at 1044.
[50] *Id.* at 1044–45.
[51] *Id.* at 1045.
[52] *Id.* at 1038.

unlikely," the court denied the preliminary injunction,[53] and the plaintiffs appealed.[54] The circuit court affirmed the district court's denial of preliminary injunction, finding that plaintiffs had "not made a compelling showing of irreparable harm" or met the burden of showing that the district court's denial was unreasonable or unsupported by the record.[55]

d. New York (*Cruz v. Zucker*)

The plaintiffs in *Cruz v. Zucker*[56]—three adult transgender named plaintiffs, filing on behalf of themselves and similarly-situated individuals—challenged a New York rule which barred payment for all "care, services, drugs or supplies rendered for the purposes of gender reassignment."[57] An amendment to this rule allowed hormone therapy and some gender-affirmation surgery for certain Medicaid recipients, but still excluded coverage for "cosmetic surgery, services, and procedures," defined as "anything solely directed at improving an individual's appearance."[58] The amendment also still denied coverage for youth.[59] The plaintiffs challenged this amended rule under the Availability and Comparability Requirements of the Medicaid Act, the "Reasonable Standards Requirement" of the Medicaid Act, the New York Constitution's equal protection provision, and ACA § 1557.[60]

The defendant moved to dismiss the complaint, arguing in part that the plaintiffs failed to state a claim for § 1557.[61] The defendant argued that, since the amended rule "draws distinctions on the basis of age, not sex," it therefore does not violate § 1557.[62] The plaintiffs argued in response that (1) the rule still denies services to transgender people which are granted to non-transgender people, and (2) the coverage exclusions still have a disparate impact on transgender individuals.[63] The court held that the "plaintiffs fail[ed] to allege any facts in support of either theory" and granted the motion to dismiss this count.[64] In a footnote, the court noted that "[i]t is not settled whether a disparate impact claim is cognizable under Section 1557 of the ACA."[65]

e. Alaska (*Being v. Crum*)

The Alaska Administrative Code denied Medicaid coverage for "treatment, therapy, surgery, or other procedures related to gender reassignment."[66] The plaintiffs in *Being v. Crum*[67] were three transgender adults filing on behalf of themselves and similarly-situated plaintiffs, and they were represented by Lambda Legal Defense and Education Fund.[68] The plaintiffs challenged this exclusion under, *inter alia*, ACA

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[53] *Id.* at 1046.
[54] *See D.H. v. Snyder*, No. 21-15668 (9th Cir. Apr. 19, 2021).
[55] *Doe v. Snyder*, 28 F. 4th 103 (9th Cir. 2022).
[56] 116 F. Supp. 3d 334 (S.D.N.Y. 2015).
[57] *Id.* at 338.
[58] *Id.*
[59] *Id.* ("[I]t did not provide coverage for hormone therapy or gender reassignment surgery for individuals under the age of eighteen, or for gender reassignment surgery for individuals under the age of twenty-one where such surgery would result in sterilization . . . .").
[60] *Id.* at 339.
[61] *Id.* at 347–48.
[62] *Id.* at 348.
[63] *Id.*
[64] *Id.*
[65] *Id.* at 348 n.8 (citing *Rumble v. Fairview Health Servs.*, No. 14-cv-2037, 2015 WL 1197415, at *12 (D. Minn. Mar. 16, 2015)).
[66] Alaska Admin. Code 105.110(12).
[67] No. 3:19-cv-00060 (D. Alaska 2019).
[68] First Amended Class Action Complaint at ¶ 1, *Being v. Crum*, No. 3:19-cv-00060 (D. Alaska Jan. 8, 2020).

§ 1557.[69] The plaintiffs argued that "[d]iscrimination on the basis of gender identity and/or reliance on sex stereotyping constitute discrimination on the basis of sex" under § 1557, and that by accepting federal financial assistance the defendant was subject to § 1557.[70]

The court did not decide on the merits of this challenge. Shortly after the plaintiffs filed their amended complaint, the defendants issued a Notice of Proposed Rulemaking that would amend the exclusions to "[a]llow Medicaid coverage for non-surgical services related to gender reassignment," but would still exclude coverage for "gender reassignment surgeries, including secondary surgeries."[71] In exchange for the defendants agreeing to eliminate these exclusions, the plaintiffs dismissed the case.[72]

f. Georgia (*Thomas v. Georgia Department of Community Health*)

The Georgia exclusion at issue in *Thomas v. Georgia Department of Community Health*[73] categorically prohibits gender-affirming surgeries (which the exclusion labels as "[t]ranssexual surgery") from Medicaid coverage, regardless of medical necessity.[74] The plaintiffs are two transgender women and a proposed class, represented by the American Civil Liberties Union (ACLU), and they likewise brought a slate of claims, including one under ACA § 1557.[75] In their amended answer to the complaint, the defendants admit that they receive federal funds, but argue that "Section 1557 speaks for itself" and that "[n]o response is required of [them]."[76]

In April 2022, the parties agreed to settle,[77] and the settlement agreement was filed with the court on June 27, 2022.[78] Georgia agreed to (a) remove the challenged exclusion from their state Medicaid plan and policies, (b) adopt the Alliant Health Solutions Gender Reassignment Review Guidelines for the treatment of gender dysphoria, and (c) pay a settlement amount of $350,000.[79]

The Alliant Health Solutions Gender Reassignment Review Guidelines do not appear to be readily available online or attached to the settlement agreement filed with the court.[80] An ACLU press release states that Georgia agreed to "provide the care when it is medically necessary for the individual" and "adopt benefits and clinical guidelines for the treatment of gender dysphoria, including benefits for gender-affirming surgical care."[81] No further detail on the guidelines seems to be available.

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[69] *Id.* at ¶ 4.
[70] *Id.* at ¶¶ 66–71.
[71] Stipulated Settlement Agreement and Order at ¶ 5, *Being v. Crum*, No. 3:19-cv-00060 (D. Alaska Dec. 22, 2020).
[72] *Id.* at ¶¶ 6–7.
[73] No. 1:21-cv-02558 (N.D. Ga. June 24, 2021).
[74] Class Action Complaint at ¶ 1, *Thomas v. Georgia Dep't of Cmnty. Health*, No. 1:21-cv-02558 (N.D. Ga. June 24, 2021).
[75] *See id.* at ¶¶ 101–109.
[76] Amended Answer and Defenses at ¶¶ 11, 101–109, *Thomas v. Georgia Dep't of Cmnty. Health*, No. 1:21-cv-02558 (N.D. Ga. July 16, 2021).
[77] Order, *Thomas v. Georgia Dep't of Cmnty. Health*, No. 21-02558 (N.D. Ga. Apr. 27, 2022).
[78] Joint Status Report, ex. A, *Thomas v. Georgia Dep't of Cmnty Health*, No. 21-02558 (N.D. Ga. June 27, 2022).
[79] *Id.* at ¶¶ 1–4.
[80] *See id.*
[81] Am. Civil Liberties Union, Press Release, ACLU of Georgia Announces Settlement with Georgia to Include Gender-Affirming Surgery in State's Medicaid Program (July 18, 2022), https://acluga.org/aclu-of-georgia-announces-settlement-with-georgia-to-include-gender-affirmingsurgery-in-states-medicaid-program/.

III. CONCLUSION

A plurality of states have chosen to specifically include coverage for gender-affirming procedures in their Medicaid programs,[82] and a number of others are silent on the issue.[83] As explored in this memorandum, however, plenty of states have expressly declined to provide coverage for these procedures.[84] Additionally, this memorandum only touches on challenges that have been brought thus far; at least six additional states have bans in place which have not yet been challenged.[85] Even in states where coverage is provided, "[i]nsurers will often deny claims as a result of confusion surrounding the medical necessity of different procedures," and "[s]ome Medicaid insurers set reimbursement rates for gender affirmation surgeries so low that it's not financially viable for a hospital or surgeon to offer them."[86] There are also very few surgeons in the country who are capable of performing numerous different procedures, and Medicaid often will not pay for procedures in another state.[87]

Based on the suits discussed in this memorandum, it is clear that courts are divided on how to understand ACA § 1557 within the realm of state Medicaid bans of gender-affirming care. Some courts have unequivocally held that these types of bans are discrimination on the basis of sex,[88] but most have yet to fully explore the § 1557 question.[89] As the barriers to gender-affirming procedures and health care

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[82] *Healthcare Laws*, *supra* note 7 (noting that the Medicaid programs in twenty-three states—Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and Wisconsin—and the District of Columbia all explicitly cover transgender-related health coverage and care); *see also* MALLORY & TENTINDO, *supra* note 7, at 2–5.

[83] *Healthcare Laws*, *supra* note 7 (noting that eighteen states—Alabama, Florida, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Utah, Virginia, and West Virginia—all have no explicit policy regarding transgender-related health coverage and care); *see also* MALLORY & TENTINDO, *supra* note 7, at 6.

[84] *Healthcare Laws*, *supra* note 7 (detailing the nine states—Arizona, Arkansas, Georgia, Missouri, Nebraska, Ohio, Tennessee, Texas, and Wyoming—which all explicitly exclude transgender-related care from their Medicaid coverage); *see also* MALLORY & TENTINDO, *supra* note 7, at 6–8.

[85] No suits have been filed challenging these Medicaid exclusions in Missouri, Nebraska, Ohio, Tennessee, Texas, or Wyoming. A Westlaw "Citing References" search under ACA § 1557 (42 U.S.C. § 18166) returned seven cases in these jurisdictions, none of which discuss transgender coverage or challenge bans thereof. *See Orders v. State Teachers Retirement System of Ohio*, 2016-Ohio-3345 (denial of erectile dysfunction medication and penile implantation surgery); *Gooden v. Batz*, No. 3:18-cv-302, 2021 WL 23899727 (S.D. Ohio June 10, 2021) (alleging that ACA § 1557 supports a "right to life-sustaining treatment"); *Tokmenko v. MetroHealthSystem*, 488 F. Supp. 3d 571 (N.D. Ohio Sep. 21, 2020) (discrimination against deaf individual); *Ohio Nurses Ass'n v. Ashtabula Cty. Med. Ctr.*, No. 1:20-cv-1656, 2020 WL 4390524 (N.D. Ohio July 31, 2020) (discrimination on the basis of sex against pregnant women); *Galuten v. Williamson Med. Ctr.*, No. 3:18-cv-00519, 2019 WL 1546940 (M.D. Tenn. Apr. 9, 2019) (age discrimination); *Lorshbaugh v. Cmnty. Health Systems*, No. 3:18-cv-394, 2019 WL 355529 (E.D. Tenn. Jan. 29, 2019) (discrimination against deaf individual); *Doe v. BlueCross BlueShield of Tenn.*, No. 2:17-cv-02793, 2018 WL 3625012 (W.D. Tenn. July 30, 2018) (discrimination on HIV/AIDS status).

[86] Sam McQuillan, *Transgender Medicaid Patients Face Coverage Barriers Despite Law*, BLOOMBERG LAW (Sep. 10, 2019), https://news.bloomberglaw.com/health-law-and-business/transgender-medicaid-patients-face-coverage-barriers-despite-law [https://perma.cc/FB86-5PRH].

[87] *Id.*

[88] *See Flack v. Wisconsin Dep't of Health Servs.*, 395 F. Supp. 3d 1001 (W.D. Wis. 2019) (holding that § 1557 provides a private right of action and that the Medicaid exclusion does discriminate on the basis of sex). *But see Hennessy-Waller v. Snyder*, No. 20-00445-TUC-SHR, 2021 WL 1192842 (D. Az. Mar. 30, 2021), *appeal docketed sub nom. D.H. v. Snyder*, No. 21-15668 (9th Cir. Apr. 19, 2021) (distinguishing *Flack* on narrower surgery exclusion and application to youths; declining to extend *Bostock* to reach Medicaid).

[89] *See Fain v. Crouch*, No. 3:20-cv-00740 (S.D. W.Va. Nov. 12, 2020) (allowing the § 1557 claim to proceed); *Cruz v. Zucker*, 116 F. Supp. 3d 334 (S.D.N.Y. 2015) (dismissing the count for failure to state supporting facts); *Being v.*

continue to grow,[90] it is critical that all transgender people, including those who rely on Medicaid, receive the procedures they need.

Crum, No. 3:19-cv-00060 (D. Alaska 2019) (settled prior to reaching the merits); *Thomas v. Georgia Dep't of Cmnty. Health*, No. 1:21-cv-02558 (N.D. Ga. June 24, 2021) (still in the early stages of litigation).

[90] *See, e.g.*, Katie Kindelan, *What It's Really Like as a Transgender Person to Get Medical Care*, GOOD MORNING AMERICA (June 28, 2021), https://www.goodmorningamerica.com/wellness/story/transgender-person-medical-care-78433509 [https://perma.cc/BHY2-RDTX]; Meredith Deliso, *'Catastrophic' Number of State Bills Target Transgender Youth, Advocates Say*, ABC NEWS (Mar. 7, 2021), https://abcnews.go.com/US/catastrophic-number-state-bills-target-transgender-youth-advocates/story?id=76138305 [https://perma.cc/TDE5-L9QU]; *Legislative Tracker: Anti-Transgender Legislation*, FREEDOM FOR ALL AMERICANS, https://freedomforallamericans.org/legislative-tracker/anti-transgender-legislation/ [https://perma.cc/T9TA-TGWH] (last visited July 22, 2021).

PRESS RELEASE

Discriminatory policies threaten care for transgender, gender diverse individuals

Washington, DC December 16, 2020

Endocrine experts unite to call for evidence-based policies governing transgender and gender diverse health care

The Endocrine Society and the Pediatric Endocrine Society oppose legislative efforts to block transgender and gender diverse individuals from accessing gender-affirming medical and surgical care, the two medical societies said in a joint policy perspective published in *The Journal of Clinical Endocrinology & Metabolism*.

In the past three years, legislators in 17 states have proposed more than two dozen bills barring medical and surgical treatments for transgender and gender diverse youth and adults. Many of these bills reflect widespread misinformation about the nature of evidence-based gender-affirming medical care.

"For young children experiencing feelings that their gender does not match the one assigned at birth, known as gender dysphoria, an initial intervention is likely to be a new haircut or clothing," said the manuscript's first author and Co-Chair of the Pediatric Endocrine Society's Transgender Special Interest Group Advocacy Subcommittee, Abby Walch, M.D., of the University of California San Francisco and Benioff Children's Hospitals in San Francisco, Calif. "The first course of action is to support the child in living as their affirmed gender identity and to provide mental health support as needed."

After transgender and gender diverse minors start puberty, prescribing hormones to suppress puberty is the recommended strategy if desired and if diagnostic and treatment criteria are met. This treatment, which is completely reversible, gives adolescents more time to explore their options.

Only reversible treatments are recommended for adolescents until they demonstrate the ability to provide informed consent and experience sustained feelings of gender dysphoria. Even then, gender-affirming hormone therapy to help individuals experience puberty in a way that matches their gender identity is partially reversible.

Three **High Court judges in the United Kingdom** ruled Dec. 1 that minors under the age of 16 likely could not give informed consent for pubertal suppression. Though it is likely to be challenged, this decision is a problematic development that could prevent transgender and gender diverse minors from obtaining the medical care they need.

"Considering transgender and gender diverse individuals face a disproportionately high risk of suicide and other health disparities, it is crucial that they have access to essential and often life-saving, gender-affirming care from well-informed health care professionals," said senior author and Co-Chair of the EndocrineSociety's

Transgender Research and Medicine Special Interest Group, Sean J. Iwamoto, M.D., of the University of Colorado School of Medicine and Rocky Mountain Regional VA Medical Center, both in Aurora, Colo. "Barring gender-affirming medical and surgical care for transgender and gender diverse individuals would force many to go through distressing and even traumatic experiences in life related to misgendering. No bill should criminalize physicians who provide the standard of care for this vulnerable population."

The course of gender-affirming treatment should be determined by patients and their health care providers, not by policymakers. Experts should be consulted regarding any policies governing treatment for transgender and gender diverse individuals, the authors wrote.

The Endocrine Society has updated its **transgender position statement** to incorporate additional information about the importance of care for minors. Read the pediatric transgender **health fact sheet**.

Other authors of the policy perspective include: Caroline Davidge-Pitts, M.B., B.Ch., of the Mayo Clinic in Rochester, Minn.; Joshua D. Safer, M.D., F.A.C.P. of Mount Sinai Center for Transgender Medicine and Surgery and Icahn School of Medicine at Mount Sinai in New York, N.Y.; Ximena Lopez, M.D., of University of Texas Southwestern Medical Center in Dallas, Texas.; and Vin Tangpricha, M.D., Ph.D., of Emory University School of Medicine in Atlanta, Ga., and of the Atlanta VA Medical Center in Decatur, Ga.

The manuscript, ***"Proper Care of Transgender and Gender Diverse Persons in the Setting of Proposed Discrimination: A Policy Perspective,"*** was published online, ahead of print.

###

Endocrinologists are at the core of solving the most pressing health problems of our time, from diabetes and obesity to infertility, bone health, and hormone-related cancers. The Endocrine Society is the world's oldest and largest organization of scientists devoted to hormone research and physicians who care for people with hormone-related conditions.

The Society has more than 18,000 members, including scientists, physicians, educators, nurses and students in 122 countries. To learn more about the Society and the field of endocrinology, visit our site at **www.endocrine.org**. Follow us on Twitter at **@TheEndoSociety** and **@EndoMedia**.

About the Pediatric Endocrine Society

The Pediatric Endocrine Society has over 1,400 members representing the various disciplines of pediatric endocrinology. The mission of the Pediatric Endocrine Society is to advance and promote the endocrine health and well-being of children and adolescents. Its vision is to be the professional home and voice of pediatric endocrinology in North America, and it aims to support and foster research, improve patient care through teaching, discovery and dissemination of knowledge, provide opportunities for professional growth, leadership and practice development, advocate for the needs of its members, patients and their families, and expand its impact and value through strategic partnerships.

PRESS RELEASE

Stress may be associated with fertility issues in women

May 10, 2022

Female rats exposed to a scream sound may have diminished ovarian reserve and reduced fertility, according to a small animal study published in the Endocrine Society's journal, Endocrinology.

PRESS RELEASE

Seattle health fair offers free screenings, wellness activities for people with diabetes

May 03, 2022

Endocrine experts will deliver free health services to underrepresented communities, including Latinx and Hispanic residents, during EndoCares® Seattle, an in-person health education event being held on May 14.

PRESS RELEASE

Endocrine-disrupting chemicals may impair bone health in male teens

May 03, 2022

Per- and polyfluoroalkyl substances (PFAS) and phthalates (two types of endocrine-disrupting chemicals) may be associated with lower bone mineral density in male teens, according to a new study published in the Endocrine Society's Journal of Clinical Endocrinology and Metabolism.

Thyroid hormone replacement undertreatment linked to worse hospital outcomes

April 26, 2022

Undertreatment with thyroid hormone replacement can put patients with hypothyroidism at risk for worse hospital outcomes, including longer length of stay and higher rates of readmission, according to a new study published in the Endocrine Society's Journal of Clinical Endocrinology and Metabolism.

People with diabetes and cognitive decline may be at higher risk for heart disease

April 21, 2022

People with type 2 diabetes who have cognitive impairment could be at greater risk for stroke, heart attack or death than other individuals with diabetes, according to a new study published in the Endocrine Society's Journal of Clinical Endocrinology and Metabolism.

From: Jee, Lauren (HHS/OCR) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DC5A273E16824884903F0D2AFC8CB225-JEE, LAUREN <Lauren.Jee1@hhs.gov>

To: de Kervor, Dylan (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91-Dekervor, D <Dylan.deKervor@hhs.gov>

CC: Barron, Pamela (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d55f83440f074842ac94e1f27f11fa9e-Barron, Pam <Pamela.Barron@hhs.gov>;
Kumar, Vatsala (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fc510606a9034939ac2eb2c237dd8cf3-Kumar, Vats <Vatsala.Kumar@hhs.gov>;
Huggins, Michael (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9597596b8c4d4b8d9faf4922101a611b-Huggins, Mi <Michael.Huggins@hhs.gov>

Subject: RE: FOR FRIDAY - Background memo on Florida's General Medicaid Policy proposed rule (limiting gender affirming care)

Date: 2022/07/27 14:36:06

Priority: Normal

Type: Note

I had one nit. Would you like us to include in Melanie's briefing book?

From: de Kervor, Dylan (HHS/OCR) <Dylan.deKervor@hhs.gov>
Sent: Wednesday, July 27, 2022 12:56 PM
To: Jee, Lauren (HHS/OCR) <Lauren.Jee1@hhs.gov>
Cc: Barron, Pamela (HHS/OCR) <Pamela.Barron@hhs.gov>; Kumar, Vatsala (HHS/OCR) <Vatsala.Kumar@hhs.gov>; Huggins, Michael (HHS/OCR) <Michael.Huggins@hhs.gov>
Subject: FOR FRIDAY - Background memo on Florida's General Medicaid Policy proposed rule (limiting gender affirming care)

Hi Lauren,

In anticipation of our call with CMS regarding proposed amendments to Florida's General Medicaid Policy to limit coverage of gender dysphoria treatment, I am sharing the attached informational memo for the Director prepared by Vatsala Kumar. The memo provides a summary of the rule and its current status. The memo itself is five pages, and the following 12 pages provide a summary of the July 8, 2022 public hearing on the proposed rule.

Please let us know if you have any questions.

Best,
Dylan

Dylan Nicole de Kervor, Esq., MSW (she/her) | Section Chief
Office for Civil Rights
U.S. Department of Health &Human Services

200 Independence Ave. S.W., Room 532E
Washington, D.C. 20201
Phone: (b)(6)
Email: dylan.dekervor@hhs.gov

Sender: Jee, Lauren (HHS/OCR) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DC5A273E16824884903F0D2AFC8CB225-JEE, LAUREN <Lauren.Jee1@hhs.gov>

Recipient: de Kervor, Dylan (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bdec12ad0974eacababe032f2b37c91-Dekervor, D <Dylan.deKervor@hhs.gov>;
Barron, Pamela (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d55f83440f074842ac94e1f27f11fa9e-Barron, Pam <Pamela.Barron@hhs.gov>;
Kumar, Vatsala (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fc510606a9034939ac2eb2c237dd8cf3-Kumar, Vats <Vatsala.Kumar@hhs.gov>;
Huggins, Michael (HHS/OCR) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9597596b8c4d4b8d9faf4922101a611b-Huggins, Mi <Michael.Huggins@hhs.gov>

Sent Date: 2022/07/27 14:35:38

Delivered Date: 2022/07/27 14:36:06

DELIBERATIVE

DATE: July 22, 2022

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

THROUGH: Dylan de Kervor, Section Chief

FROM: Vatsala Kumar, Intern

SUBJECT: INFORMATION MEMO – Florida Proposed Rule 59G-1.050

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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). 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). 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). 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 universities[1] drafted a report reviewing the Florida Medicaid Report ("Critical Review"). *See* Meredithe McNamara et al., (July 8, 2022). The Critical Review

[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 Southwestern, and University of Alabama at Birmingham. *See* Meredithe 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.

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 Florida 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).

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).

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 Care*, Penn. Capital-Star (Sept. 15, 2020). 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. (last visited July 22, 2022). Dr. Van Mol is also a member. *Andre Van Mol*, Pub. Discourse (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). 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. 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 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). 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). 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). 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). 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.*

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).

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).

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 lead 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

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[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.

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

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."

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

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 idealogues 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

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 sel[f] 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.

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

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."

A pastor from Florida spoke next on behalf of Protect Our Children Project, Duval Country 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." Sbe 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 bave a hysterectomy," which for teens could mean a potential hysterectomy before the age of twenty. She said tbat "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 witb 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.

"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

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).