



AN ACT PROVIDING FOR A YOUTH HEALTH PROTECTION ACT; PROHIBITING CERTAIN MEDICAL AND SURGICAL TREATMENTS TO TREAT MINORS WITH GENDER DYSPHORIA; PROHIBITING PUBLIC FUNDS, PROGRAMS, PROPERTY, AND EMPLOYEES FROM BEING USED FOR THESE TREATMENTS; PROVIDING THAT A HEALTH CARE PROFESSIONAL WHO VIOLATES THIS LAW COMMITS PROFESSIONAL MISCONDUCT; PROVIDING A PRIVATE CAUSE OF ACTION; PROHIBITING DISCHARGE OF PROFESSIONAL LIABILITY VIA INSURANCE; AND PROVIDING DEFINITIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [Sections 1 through 6] may be cited as the "Youth Health Protection Act".

Section 2. Purpose. The purpose of [sections 1 through 6] is to enhance the protection of minors and their families, pursuant to Article II, section 15, of the Montana constitution, from any form of pressure to receive harmful, experimental puberty blockers and cross-sex hormones and to undergo irreversible, life-altering surgical procedures prior to attaining the age of majority.

Section 3. Definitions. As used in [sections 1 through 6], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Female" means a member of the human species who, under normal development, has XX chromosomes and produces or would produce relatively large, relatively immobile gametes, or eggs, during her life cycle and has a reproductive and endocrine system oriented around the production of those gametes. An individual who would otherwise fall within this definition, but for a biological or genetic condition, is female for the purposes of [sections 1 through 6].

(2) "Gender" means the psychological, behavioral, social, and cultural aspects of being male or

female. An individual's gender may or may not align with the individual's sex.

(3) "Gender dysphoria" is the condition defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition.

(4) "Health care professional" means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of the practice of the person's profession.

(5) "Male" means a member of the human species who, under normal development, has XY chromosomes and produces or would produce small, mobile gametes, or sperm, during his life cycle and has a reproductive and endocrine system oriented around the production of those gametes. An individual who would otherwise fall within this definition, but for a biological or genetic condition, is male for purposes of [sections 1 through 6].

(6) "Mental health professional" means a person who is licensed to diagnose and treat mental health conditions in this state.

(7) "Minor" means an individual under 18 years of age.

(8) "Physician" means a person who is licensed to practice medicine in this state.

(9) "Sex" means the organization of body parts and gametes for reproduction in human beings and other organisms. In human beings, there are exactly two sexes, male and female, with two corresponding types of gametes. The sexes are determined by the biological and genetic indication of male or female, including sex chromosomes, naturally occurring sex chromosomes, gonads, and nonambiguous internal and external genitalia present at birth, without regard to an individual's psychological, behavioral, social, cultural, chosen, or subjective experience of gender.

(10) "Social transitioning" means acts other than pharmaceutical or surgical interventions that are offered as treatment to a minor for the purpose of the minor presenting as the opposite sex or an identity other than the minor's sex, including the changing of a minor's preferred pronouns or dress and the recommendation to wear clothing or devices, such as binders, for the purpose of concealing a minor's secondary sex characteristics.

Section 4. Prohibitions. (1) (a) Except as provided in subsection (1)(c), a person may not knowingly

provide the following medical treatments to a female minor to address the minor's perception that her gender or sex is not female:

- (i) surgical procedures, including a vaginectomy, hysterectomy, oophorectomy, ovariectomy, reconstruction of the urethra, metoidioplasty, phalloplasty, scrotoplasty, implantation of erection or testicular prostheses, subcutaneous mastectomy, voice surgery, or pectoral implants;
- (ii) supraphysiologic doses of testosterone or other androgens; or
- (iii) puberty blockers such as GnRH agonists or other synthetic drugs that suppress the production of estrogen and progesterone to delay or suppress pubertal development in female minors.

(b) Except as provided in subsection (1)(c), a person may not knowingly provide the following medical treatments to a male minor to address the minor's perception that his gender or sex is not male:

- (i) surgical procedures, including a penectomy, orchiectomy, vaginoplasty, clitoroplasty, vulvoplasty, augmentation mammoplasty, facial feminization surgery, voice surgery, thyroid cartilage reduction, or gluteal augmentation;
- (ii) supraphysiologic doses of estrogen; or
- (iii) puberty blockers such as GnRH agonists or other synthetic drugs that suppress the production of testosterone or delay or suppress pubertal development in male minors.

(c) The medical treatments listed in subsections (1)(a) and (1)(b) are prohibited only when knowingly provided to address a female minor's perception that her gender or sex is not female or a male minor's perception that his gender or sex is not male. Subsections (1)(a) and (1)(b) do not apply for other purposes, including:

- (i) treatment for a person born with a medically verifiable disorder of sex development, including:
 - (A) a person born with external biological sex characteristics that are irresolvably ambiguous, including an individual born with 46 XX chromosomes with virilization, 46 XY chromosomes with undervirilization, or having both ovarian and testicular tissue; and
 - (B) a person whom a physician has otherwise diagnosed with a disorder of sexual development in which the physician has determined through genetic or biochemical testing that the person does not have normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action for a male or female; and

(ii) treatment of any infection, injury, disease, or disorder that has been caused or exacerbated by a medical treatment listed in subsection (1)(a) or (1)(b), whether or not the medical treatment was performed in accordance with state and federal law and whether or not funding for the medical treatment is permissible under state and federal law.

(2) If a health care professional or physician violates subsection (1)(a) or (1)(b):

(a) the health care professional or physician has engaged in unprofessional conduct and is subject to discipline by the appropriate licensing entity or disciplinary review board with competent jurisdiction in this state. That discipline must include suspension of the ability to administer health care or practice medicine for at least 1 year.

(b) parents or guardians of the minor subject to the violation have a private cause of action for damages and equitable relief as the court may determine is justified. The court may also award reasonable attorney fees and court costs to a prevailing party.

(3) Public funds may not be directly or indirectly used, granted, paid, or distributed to any individual, entity, or organization for the purposes of providing the medical treatments prohibited in subsection (1)(a) or (1)(b).

(4) Any individual or entity that receives state funds to pay for or subsidize the treatment of minors for psychological conditions, including gender dysphoria, may not use state funds to promote or advocate the medical treatments prohibited in subsection (1)(a) or (1)(b).

(5) Any amount paid by an individual or entity during a tax year for the provision of the procedures described in subsection (1)(a) or (1)(b) is not tax deductible under state law.

(6) The Montana medicaid and children's health insurance programs may not reimburse or provide coverage for the medical treatments prohibited in subsection (1)(a) or (1)(b).

(7) Except to the extent required by the first amendment to the United States constitution, state property, facilities, or buildings may not be knowingly used to promote or advocate the use of social transitioning or the medical treatments prohibited in subsection (1)(a) or (1)(b).

(8) A health care professional or physician employed by the state or a county or local government may not, while engaged in the official duties of employment, knowingly provide the medical treatments prohibited in subsection (1)(a) or (1)(b).

(9) State property, facilities, or buildings may not knowingly be used to provide the medical treatments prohibited in subsection (1)(a) or (1)(b).

(10) A state employee whose official duties include the care of minors may not, while engaged in those official duties, knowingly provide or promote the medical treatments prohibited in subsection (1)(a) or (1)(b).

(11) The attorney general may bring an action to enforce compliance with this section.

Section 5. Private cause of action for subsequent harm. (1) Any health care professional or physician who provides the medical treatments prohibited in [section 4(1)(a) or (1)(b)] is strictly liable to that person if the medical treatment or the after-effects of the medical treatment result in any injury, including physical, psychological, emotional, or physiological harms, within the next 25 years.

(2) Except as provided in subsection (3), a person who suffers an injury described in subsection (1) or the person's legal guardian or estate may bring a civil action with respect to the injury or for any violation of [section 4] within 4 years from the time of discovery by the injured party of both the injury and the causal relationship between the medical treatment and the injury against the offending health care professional or physician in a court of competent jurisdiction for:

- (a) declaratory or injunctive relief;
- (b) compensatory damages, including but not limited to pain and suffering, loss of reputation, loss of income, and loss of consortium, including the loss of expectation of sharing parenthood;
- (c) punitive damages;
- (d) any other appropriate relief; and
- (e) attorney fees and costs.

(3) (a) If, at the time the person subjected to medical treatment discovers the injury and the causal relationship between the medical treatment and the injury, the person is under legal disability, the limitation period in subsection (2) does not begin to run until the removal of the disability.

(b) The limitation period in subsection (2) does not run during a time period when the individual is subject to threats, intimidation, manipulation, fraudulent concealment, or fraud perpetrated by the health care professional or physician who provided the medical treatment described in subsection (1) or by any person

acting in the interest of the health care professional or physician.

(4) A health care professional or physician may not be indemnified for potential liability under this section.

(5) The attorney general may bring an action to enforce compliance with this section.

(6) This section does not deny, impair, or otherwise affect any right or authority of the attorney general, the state, or any agency, officer, or employee of the state, acting under any law other than this section, to institute or intervene in any proceeding.

Section 6. Prohibited insurance coverage. A professional liability insurance policy issued to a health care professional or physician may not include coverage for damages assessed against the health care professional or physician who provides any medical treatment prohibited in [section 4(1)(a) or (1)(b)].

Section 7. Medical or surgical transition for minors. Failure of a health care professional, mental health professional, or physician to adhere to [section 4] constitutes unprofessional conduct, with a mandatory minimum suspension of the ability to practice the person's profession for 1 year.

Section 8. Prohibited reimbursement or coverage. Pursuant to [section 4], the Montana medicaid program may not reimburse or provide coverage for any medical treatment prohibited in [section 4(1)(a) or (1)(b)].

Section 9. Codification instruction. (1) [Sections 1 through 6] are intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 6].

(2) [Section 7] is intended to be codified as an integral part of Title 37, chapter 2, part 3, and the provisions of Title 37, chapter 2, part 3, apply to [section 7].

(3) [Section 8] is intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to [section 8].

Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the

invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

- END -

I hereby certify that the within bill,
SB 99, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2023.

Speaker of the House

Signed this _____ day
of _____, 2023.

SENATE BILL NO. 99

INTRODUCED BY J. FULLER

AN ACT PROVIDING FOR A YOUTH HEALTH PROTECTION ACT; PROHIBITING CERTAIN MEDICAL AND SURGICAL TREATMENTS TO TREAT MINORS WITH GENDER DYSPHORIA; PROHIBITING PUBLIC FUNDS, PROGRAMS, PROPERTY, AND EMPLOYEES FROM BEING USED FOR THESE TREATMENTS; PROVIDING THAT A HEALTH CARE PROFESSIONAL WHO VIOLATES THIS LAW COMMITS PROFESSIONAL MISCONDUCT; PROVIDING A PRIVATE CAUSE OF ACTION; PROHIBITING DISCHARGE OF PROFESSIONAL LIABILITY VIA INSURANCE; AND PROVIDING DEFINITIONS.