

SENATE BILL NO. 99

INTRODUCED BY J. FULLER

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A BILL FOR AN ACT ENTITLED: "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:

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

NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 6] is to enhance the
protection of minors, pursuant to Article II, section 15, of the Montana constitution, from any form of pressure to
undergo irreversible medical procedures to change sex prior to attaining the age of majority.

NEW SECTION. **Section 3. Definitions.** As used in this part, unless the context clearly indicates
otherwise, the following definitions apply:

- (1) "Female" means an individual who is a member of the female sex.
- (2) "Gender" means the psychological, behavioral, social, and cultural aspects of being male or female.
- (3) "Gender dysphoria" is the diagnosis of gender dysphoria under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition.
- (4) "Health care professional" means a person who is licensed, certified, or otherwise authorized

1 by the laws of this state to administer health care in the ordinary course of the practice of the person's
2 profession.

3 (5) "Male" means an individual who is a member of the male sex.

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

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

7 (8) "Perceived gender" is a person's internal sense of his or her gender.

8 (9) "Perceived sex" is a person's internal sense of his or her sex.

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

10 (11) "Sex" means the biological indication of male and female in the context of reproductive
11 potential or capacity, such as sex chromosomes, naturally occurring sex hormones, gonads, and unambiguous
12 internal and external genitalia present at birth, including secondary sex characteristics, without regard to an
13 individual's psychological, chosen, or subjective experience of gender.

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

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19 **NEW SECTION. Section 4. Prohibitions.** (1) Public funds may not be directly or indirectly used,
20 granted, paid, or distributed to any individual, entity, or organization that provides or subsidizes medication or
21 surgery as a treatment to address an inconsistency between a minor's sex and the minor's perceived gender or
22 perceived sex.

23 (2) Any individual or entity that receives state funds to pay or subsidize the treatment of minors for
24 psychological conditions, including gender dysphoria, may not use state funds to promote or advocate
25 medication or surgery as a treatment to address an inconsistency between a minor's sex and the minor's
26 perceived gender or perceived sex.

27 (3) Any amount paid by an individual or entity during a tax year for the provision of either
28 medication or surgery as a treatment to address an inconsistency between a minor's sex and the minor's

1 perceived gender or perceived sex is not tax deductible.

2 (4) The Montana medicaid program may not reimburse or provide coverage for medication or
3 surgery as a treatment to address an inconsistency between a minor's sex and the minor's perceived gender or
4 perceived sex.

5 (5) Except to the extent required by the first amendment to the United States constitution, state
6 property, facilities, or buildings may not be used to promote or advocate the use of social transitioning,
7 medication, or surgery as a treatment to address an inconsistency between a minor's sex and the minor's
8 perceived gender or perceived sex.

9 (6) A health care professional or physician employed by the state or a county or local government
10 may not provide medication or surgery as a treatment to address an inconsistency between a minor's sex and
11 the minor's perceived gender or perceived sex.

12 (7) State property, facilities, or buildings may not be used to provide medication or surgery as a
13 treatment to address an inconsistency between a minor's sex and the minor's perceived gender or perceived
14 sex.

15 (8) A state employee whose official duties include the care of minors may not, while engaged in
16 those official duties, provide or promote the use of social transitioning, medication, or surgery as a treatment to
17 address an inconsistency between a minor's sex and the minor's perceived gender or perceived sex.

18 (9) (a) Except as provided in subsection (9)(c), a person may not knowingly provide the following
19 treatment, either as a necessary or elective treatment, to a female minor to address the minor's perception that
20 her gender or sex is not female:

21 (i) surgical procedures, including a vaginectomy, hysterectomy, oophorectomy, ovariectomy,
22 reconstruction of the urethra, metoidioplasty, phalloplasty, scrotoplasty, implantation of erection or testicular
23 protheses, subcutaneous mastectomy, voice surgery, or pectoral implants;

24 (ii) supraphysiologic doses of testosterone or other androgens; or

25 (iii) puberty blockers such as GnRH agonists or other synthetic drugs that suppress the production
26 of estrogen and progesterone to delay or suppress pubertal development in female minors.

27 (b) Except as provided in subsection (9)(c), a person may not knowingly provide the following
28 treatment, either as a necessary or elective treatment, to a male minor to address the minor's perception that

1 his gender or sex is not male:

2 (i) surgical procedures, including a penectomy, orchiectomy, vaginoplasty, clitoroplasty,
3 vulvoplasty, augmentation mammoplasty, facial feminization surgery, voice surgery, thyroid cartilage reduction,
4 or gluteal augmentation;

5 (ii) supraphysiologic doses of estrogen; or

6 (iii) puberty blockers such as GnRH agonists or other synthetic drugs that suppress the production
7 of testosterone or delay or suppress pubertal development in male minors.

8 (c) The procedures listed in subsections (9)(a) and (9)(b) are prohibited only when knowingly
9 provided as treatment to address a female minor's perception that her gender or sex is not female or a male
10 minor's perception that his gender or sex is not male. Subsections (9)(a) and (9)(b) do not apply to treatment for
11 other purposes, including:

12 (i) treatment for a person born with a medically verifiable disorder of sex development, including:

13 (A) a person born with external biological sex characteristics that are irresolvably ambiguous,
14 including an individual born with 46 XX chromosomes with virilization, 46 XY chromosomes with
15 undervirilization, or having both ovarian and testicular tissue; and

16 (B) a person whom a physician has otherwise diagnosed with a disorder of sexual development in
17 which the physician has determined through genetic or biochemical testing that the person does not have
18 normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action for a male or
19 female; and

20 (ii) treatment of any infection, injury, disease, or disorder that has been caused or exacerbated by
21 the performance of a procedure listed in subsection (9)(a) or (9)(b), whether or not the procedure was
22 performed in accordance with state and federal law and whether or not funding for the procedure is permissible
23 under state and federal law.

24 (10) If a health care professional or physician violates subsection (9)(a) or (9)(b):

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

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

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5 NEW SECTION. **Section 5. Private cause of action for subsequent harm.** (1) Any health care
 6 professional or physician who provides puberty blockers, cross-sex hormones, or surgical procedures as a
 7 treatment to address an inconsistency between a minor's sex and the minor's perceived gender or perceived
 8 sex is strictly liable to that minor if the treatment or the after-effects of the treatment result in any injury,
 9 including physical, psychological, emotional, or physiological harms, within the next 25 years.

10 (2) Except as provided in subsection (3), a person who suffers an injury described in subsection
 11 (1), or the person's legal guardian or estate, may bring a civil action either within 25 years from the day the
 12 person reaches 18 years of age or within 4 years from the time of discovery by the injured party of both the
 13 injury and the causal relationship between the treatment and the injury, whichever date is later, against the
 14 offending health care professional or physician in a court of competent jurisdiction for:

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

21 (3) (a) If, at the time the person subjected to treatment attains 18 years of age, the person is under
 22 other legal disability, the limitation period in subsection (2) does not begin to run until the removal of the
 23 disability.

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

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

1 section.

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

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

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7 **NEW SECTION. Section 6. Prohibited insurance coverage.** A professional liability insurance policy
8 issued to a health care professional or physician may not include coverage for damages assessed against the
9 health care professional or physician who provides any medication or surgical procedure described in [section
10 4] as a treatment to address an inconsistency between a minor's sex and the minor's perceived gender or
11 perceived sex.

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

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17 **NEW SECTION. Section 8. Prohibited reimbursement or coverage.** Pursuant to [section 4], the
18 Montana medicaid program may not reimburse or provide coverage for medication or surgery as a treatment to
19 address an inconsistency between a minor's sex and the minor's perceived gender or perceived sex.

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

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

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

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28 **NEW SECTION. Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are

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

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