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APSAC ALERT

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Trends in State Legislation Against Gender-Affirming Health Care

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Legislators in an increasing number of U.S. states are considering bills restricting and prohibiting gender-affirming health care for transgender youth (Persyn, 2023). As of March 25, 2023, 454 anti-LGBTQ bills, of which 128 are gender-affirming health care (GAH) bans, have been proposed. Nineteen bills have thus far been signed into law (seven of them are GAH bans). Several more GAH ban bills appear likely to succeed this year. Every court that has heard challenges to statutes banning GAH for minors has enjoined or otherwise ruled against them, in part because they unconstitutionally discriminate against gender identity by forbidding certain therapies and procedures only when provided to trans youth without a persuasive justification. American Professional Society on the Abuse of Children (APSAC) has stated that gender-affirming care is not child abuse and does not meet federal definitions of child maltreatment (APSAC, 2022a). The APSAC Amicus Committee has been involved in tracking and responding to state legislation (APSAC, 2022b), and we are writing to share new information about potential effects on professional practice with maltreated children.

What Is Gender-Affirming Health Care?

The term *gender-affirming care* is a broad concept encompassing a range of medical, mental health, surgical, and nonmedical services (Wagner et al., 2019). The American Academy of Pediatrics (AAP) has built a gender-affirmative care model (GACM) to advise pediatric health care providers on "developmentally appropriate care" of transgender and gender-diverse (TGD) youth (Rafferty et al., 2018). From a GACM perspective, transgender identities and expressions are not disorders; rather, they are part of normal variations in human diversity that are not always adequately defined by the gender binary. Rather than being absolute, gender identities evolve,

reflecting biology, development, socialization, and culture. Mental health issues among TGD people most frequently result from social stigma and negative experiences, sometimes including rejection by the family and community of origin; these and other negative reactions are thought to contribute to the high rate of suicide in this population.

The AAP's GACM recommends individually tailoring interventions and treatments to the particular child. The goal of the GACM is to treat gender dysphoria by affirming gender identity. According to the AAP, *gender dysphoria* is "a clinical symptom that is characterized by a sense of alienation to some or all of the physical characteristics or social roles of one's assigned gender"; also, *gender dysphoria* is listed in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), focusing on the "distress that stems from the incongruence between one's expressed or experienced (affirmed) gender and the gender assigned at birth." Expressed or experienced gender, or gender identity, is "one's internal sense of who one is, which results from a multifaceted interaction of biological traits, developmental influences, and environmental conditions." Children who are transgender and gender diverse "report first having recognized their gender as 'different' at an average age of 8.5 years; however, they did not disclose such feelings until an average of 10 years later" (p. e20182162). Treatment first involves recognition, followed by counseling and, if medically indicated, treatments to stop or reverse puberty. As with all medical interventions and treatments, these medications have risks and benefits to be appropriately evaluated by the health care team, including pediatric patients and their families. Surgical interventions are typically limited to adults.

Treating Gender-Affirming Health Care as Maltreatment

Many who reject the GACM, including legislators, argue that youth who receive doctor- and parent/guardian-approved gender-affirming care are victims of child maltreatment. Those who accept the GACM argue that youth who are deprived of the GACM by state legislative or executive action are victims of state-sponsored medical care neglect, which is a form of child maltreatment. State statutes and regulations that characterize gender-affirming care as child abuse rely on prejudice and disinformation, and those opposed to GAH have erroneously called this "medical child abuse." Medical child abuse and medical care neglect have specific definitions in state and federal law.

A diagnosis of medical child abuse identifies a type of child maltreatment that relies fundamentally on deceptive conduct by the parent or guardian (APSAC, 2017). In the case of GAC, the physician evaluates the need for such care and renders an independent assessment, raising the question whether there is parent or guardian deception of the physician, a predicate of the medical child abuse thesis. Alternatively, parents are "neglecting" their child's medical needs by providing this care. The remaining possibility, which appears to be the one intended by legislators attempting to eliminate gender-affirming care, is to claim that the professional medical consensus is malfeasant—that is, pediatricians, pediatric endocrinologists, and other professionals on the health care team either actively wish to cause their patients harm or are reckless in their disregard for patient safety. No evidence supports these views.

State Regulations

The current legal battle over the safety and efficacy of gender-affirming care is focused in the states. It began in Texas in October 2019 as the result of a custody dispute between a mother who wished to affirm her child and a father who battled to prevent his child from accessing gender-affirming care, in part by accusing his child's mother of "emotional abuse" in the form of gender affirmation. Cultural conservatives, politicians, and legislators in several states jumped on the bandwagon, and the battle was joined (Harper, 2022).

As of April 3, 2023, Alabama, Arizona, Arkansas, Florida, Georgia, Iowa, Kentucky, Mississippi, South Dakota, Tennessee, Texas, Utah, and West Virginia have banned gender-affirming care for minors in various forms, eleven by statute and two by executive order. Idaho, Indiana, and Montana have sent bans to their governors' desks. Several other states have bills pending in one or both houses with varying additional penalties to families and medical providers, including defining GAH as child abuse, forcing detransitioning, assigning criminal and civil liability to physicians, restricting professional licensing, and eliminating public funding (see Table 1 with bans that have already passed or have a strong likelihood of passing).

Legislatures in more than half of U.S. states have considered bills banning gender-affirming care for minors and the number of anti-transgender bills continues to grow, session by session. No federal or state judicial precedent to date has enabled or approved prohibitions of gender-affirming care.

Steps for Professionals to Take

Regardless of specialty or practice, all professionals, especially child welfare and child protection professionals, should

- Be knowledgeable about the legislation in their state regarding gender-affirming health care, which is changing almost daily.
- Participate in the public discussion of transgender youth rights to medical care and join with other advocacy groups such as APSAC State Chapters and the American Academy of Pediatrics to support children and families needing this care.
- Explain how gender-affirming care is not child maltreatment and families and professionals should not be penalized for meeting the medical and mental health needs of this vulnerable population.

Table 1. State Legislation as of 3/25/2023. (See updated list HERE)

State	Bill / Date	Child Abuse	Forced De-transition	Criminal Liability (HCP*)	Civil Liability (HCP*)	Licensing Revocation	Public Funding Limits
AL	SB 184 Signed 4/7/2022	No	Yes	Yes (class C felony)	Unknown	Unknown	No
AR	HB1570 Signed 4/6/2021	No	Yes	No	Yes	Yes	Yes
AZ	SB 1138 Signed 3/30/2022 (surgery ban only)	No	N/A	No	No	Unknown	No
FL	HB 1421; SB 254 (pending)	No	Yes	Yes (3rd degree felony HB 1421)	Yes	Mandatory	Yes
GA	SB 140 Signed 3/23/2023 (allows puberty blockers only)	No	Allows continued treatment (7/1/2023)	No	No	"Shall be held administratively accountable to the board for such violation"	No
IA	SF538 Signed 3/22/2023	No	Yes	No	Yes	Unknown ("unprofessional conduct" subject to discipline)	No
ID	H0071 Waiting for governor's signature 3/30	No	Yes	Yes, 10y Felony	No	[Presumed]	No
IN	SB0480 HB 1569 SB480 passed both chambers 3/29 HB 1569 passed both chambers 3/30	No	Yes	No	Yes (until pt is 28)	Unknown ("violates the standards of practice")	No
KS	SB12 SB233 (pending)	No	Yes	Yes (felony)	Yes (until pt is 21)	Mandatory	No
KY	SB 150 HB 470 SB 150 vetoed 3/24 Legislature overrode veto 3/29	No	Yes		Yes (until pt is 30)	Mandatory	Yes
MO	HB419 SB49 (pending)	No	Yes	No	Yes (until age 48)	Mandatory	Yes

MT	SB99 Waiting for governor's signature 3/29	No	Yes	No	Yes	Mandatory discipline, min. one year suspended license	Yes
MS	HB 1125 Signed 2/28/2023	No	Yes	No	Yes (until age 48)	Mandatory	Yes
ND	HB1254 (pending)	No	Yes	Yes	Unknown	[Presumed]	No
OH	HB 68 (pending)	No	Unclear	No	Yes (until age 38)	"Subject to discipline"	Yes
OK	SB 613 SB 129 HB 2177	No	Yes	Yes 10 y felony/ $100k	Yes (until age 45)	Mandatory	Yes
SC	H3551 (pending)	No	Yes	No	Yes	Yes (misconduct with discipline up to revocation)	No
SD	HB1080 Signed 2/14/2023	No	Yes	No	Yes (until age 25)	Mandatory	No
TN	SB0001 Signed 3/2/2023	No	Yes	No	Yes (until age 48)	"Unprofessional conduct"	No
TX	HB42 SB 1690 HB4754**	Yes (42)	Yes	Yes, felony (40-year statute of limits)	Yes	Yes, mandatory (40-year statute of limits)	Yes
UT	SB0016 Signed 2/1/2023	No	Unclear	No	Yes	"Unprofessional conduct"	No
WV	HB 2007 Signed 3/29	No	No, but practice is narrowly allowed / strictly constrained	No	No	Highly regulated but not prohibited	No

*HCP = physical or mental health care provider

**HB4754 ban is for people 25 years and under

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