

Help Not Harm Act; SB 63

SB 63 enacts the Help Not Harm Act (Act). The Act:

- Prohibits health care providers from providing certain treatments to a child who has a perceived gender or perceived sex that is different than the child's biological sex;
- Prohibits recipients of state funds, including the Kansas Program of Medical Assistance and its managed care organizations, from using such funds to provide or subsidize the prohibited treatment;
- Prohibits recipients of state funds for the treatment of children for psychological conditions from prescribing, dispensing, or administering medication as identified in the bill; performing surgery; or providing a referral to another health care provider for the identified medication or surgery for a child whose perceived gender or perceived sex is inconsistent with the child's sex;
- Prohibits the use of state property, facilities, or buildings to promote or advocate the use of social transitioning, medication, or surgery, except to the extent required by the *U.S. Constitution*;
- Prohibits certain state employees, while in their official capacities, from promoting the use of social transitioning or providing or promoting medication or surgery as a treatment;
- Defines that a health care provider in violation of the Act would be engaged in unprofessional conduct and provides authority to sanction the licensee;
- Provides exceptions to the prohibited treatment for treatments provided for other purposes;
- Establishes a treatment protocol for a provider to follow for a patient currently receiving the prohibited treatment;
- Establishes a strict liability standard, establishes a statute of limitations of 10 years from the child's 18th birthday, and creates a private cause of action; and
- Prohibits a professional liability insurance policy issued to a health care provider from providing coverage for damages assessed against a health care provider who provided the prohibited treatment.

Definitions

The bill defines various terms as used in the Act, including:

- “Child” means an individual less than 18 years of age;
- “Gender” means the psychological, behavioral, social, and cultural aspects of being male or female;
- “Gender dysphoria” means the diagnosis of gender dysphoria in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders; and
- “Social transitioning” means acts other than medical or surgical interventions that are undertaken for the purpose of presenting as a member of the opposite sex, including the changing of an individual’s preferred pronouns or manner of dress.

Use of State Funds and Resources

The bill states that a recipient of state funds could not use those funds to provide or subsidize medication or surgery as a treatment for a child’s perception of gender or sex that is inconsistent with the child’s sex.

The bill prohibits an individual or entity that receives state funds to pay for or subsidize the treatment of children for psychological conditions, including gender dysphoria, from prescribing, dispensing, or administering medication as identified in the bill; perform surgery; or provide a referral to another health care provider for the identified medication or surgery for a child whose perceived gender or perceived sex is inconsistent with the child’s sex.

The bill prohibits the Kansas Program of Medical Assistance and its managed care organizations from reimbursing or providing coverage for medication or surgery as a treatment for a child whose perceived gender or perceived sex is inconsistent with the child’s sex.

Except to the extent required by the First Amendment to the *U.S. Constitution*, the bill prohibits a state property, facility, or building from being used to promote or advocate the use of social transitioning, medication, or surgery as a treatment for a child whose perceived gender or perceived sex is inconsistent with the child’s sex.

The bill also prohibits a state property, facility, or building from being used to prescribe, administer, or dispense medication or perform surgery as a treatment for a child whose perceived gender or perceived sex is inconsistent with the child’s sex.

The bill prohibits a state employee whose official duties include the care of children, and while engaged in official duties, from providing or promoting the use of social transitioning, medication, or surgery as a treatment for a child whose perceived gender or perceived sex is inconsistent with the child’s sex.

Treatment Prohibitions

Except as otherwise provided in the bill, the bill prohibits a health care provider from knowingly providing the following to a female child whose perceived gender or sex is not female as treatment for distress arising from the female child's perception that the child's gender or sex is not female:

- Surgical procedures, including vaginectomy, hysterectomy, oophorectomy, ovariectomy, reconstruction of the urethra, metoidioplasty, phalloplasty, scrotoplasty, implantation of erection or testicular protheses, subcutaneous mastectomy, voice surgery, liposuction, lipofilling, or pectoral implants;
- Supraphysiologic doses of testosterone or other androgens; or
- 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 children.

Except as otherwise provided in the bill, the bill prohibits a health care provider from knowingly providing the following to a male child whose perceived gender or sex is not male as treatment for distress arising from the male child's perception that the child's gender or sex is not male:

- Surgical procedures, including a penectomy, orchietomy, vaginoplasty, clitoroplasty, vulvoplasty, augmentation mammoplasty, facial feminization surgery, liposuction, lipofilling, voice surgery, thyroid cartilage reduction, or gluteal augmentation;
- Supraphysiologic doses of estrogen; or
- Puberty blockers, such as GnRH agonists or other synthetic drugs that suppress the production of testosterone or delay or suppress pubertal development in male children.

The treatment prohibited in the bill does not apply to treatment provided for other purposes, including:

- Treatment for individuals born with a medically verifiable disorder of sex development, including:
 - An individual born with external biological sex characteristics that are irresolvably ambiguous, including an individual born with 46 XX chromosomes with virilization, 46 XY chromosomes with under virilization, or having both ovarian and testicular tissue; or
 - An individual whom a physician has otherwise diagnosed with a disorder of sexual development that the physician has determined through genetic or biochemical testing that the individual does not have normal sex

chromosome structure, sex steroid hormone production, or sex steroid hormone action for a male or female; and

- Treatment of any infection, injury, disease, or disorder that was caused or exacerbated by the performance of a procedure listed in this section of the bill.

If a health care provider has initiated a course of treatment for a child prior to the effective date of the Act that includes prescribing, administering, or dispensing a drug that is prohibited by the bill, the bill allows the health care provider to continue the course of treatment if the health care provider:

- Develops a plan to systemically reduce the child's use of such drug;
- Determines and documents in the child's medical record that immediately terminating the child's use of such drug will cause harm to the child; and
- Does not extend the course of treatment beyond December 31, 2025.

Discipline and Private Cause of Action

If a health care provider violates the provisions of the bill, the bill states the health care professional has engaged in unprofessional conduct and will have their license revoked by the appropriate licensing entity or disciplinary review board with competent jurisdiction in Kansas.

The bill states that a health care professional who provides treatment to a child in violation of the bill will be held strictly liable to the child if the treatment or effects of such treatment results in any physical, psychological, emotional, or physiological harms to the child in the next 10 years from the date that the individual turns 18 years old. The bill allows a prevailing plaintiff to recover actual and punitive damages, injunctive relief, the cost of the lawsuit, and reasonable attorney fees.

The bill provides a private cause of action for the parents of a child who has been provided treatment in violation of the bill and for an individual who was provided treatment as a child in violation of the bill against the health care provider who provided such treatment for actual damages, punitive damages, injunctive relief, the cost of the lawsuit, and reasonable attorney fees.

The bill requires an action against a health care provider brought by an individual who was provided treatment as a child to be filed within 10 years from the date the individual turns 18 years of age.

Liability Insurance

The bill prohibits a professional liability insurance policy issued to a health care provider from including coverage for damages assessed against the health care provider who provides treatments to a child in violation of the Act.

Severability

If any provision or clause of the Act to any person or circumstance is held invalid, the bill states the invalidity would not affect other provisions or applications of the Act that could be given effect without the invalid provision or application. The provisions of the bill are severable.

Violations of the Act

The bill adds violations of the Act to the list of offenses constituting “unprofessional conduct,” as the term is defined in the Kansas Healing Arts Act.