

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1639 Gender and Biological Sex
SPONSOR(S): Select Committee on Health Innovation, Bankson and others
TIED BILLS: IDEN./SIM. BILLS:

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|------------------|---------|--|
| 1) Select Committee on Health Innovation | 10 Y, 5 N, As CS | Lloyd | Calamas |
| 2) Insurance & Banking Subcommittee | | | |
| 3) Infrastructure Strategies Committee | | | |

SUMMARY ANALYSIS

Gender dysphoria is a behavioral health disorder diagnosable by a health care practitioner in which a person experiences incongruence between one's experienced or expressed gender and birth sex, and meets age-specific diagnostic sub-criteria. Treatment for gender dysphoria has evolved from a behavioral health approach focused on helping patients become comfortable with their biological sex, to an affirmation-focused approach potentially involving puberty blocking medication for minors and potentially cross-hormone medication and surgical interventions. Current law prohibits these services for minors, and requires informed consent for adults.

Health insurers and health maintenance organizations are regulated by the Office of Insurance Regulation and the Agency for Health Care Administration, respectively. Current law does not regulate insurance coverage of sex-reassignment prescriptions or procedures.

CS/HB 1639 requires any health insurer or health maintenance organization coverage policy delivered in the state after July 1, 2024, which covers sex-reassignment prescriptions or procedures, to also provide coverage for treatment to de-transition from such prescriptions or procedures, for an appropriate additional premium. In addition, insurers and HMOs that offer policies with coverage for sex-reassignment prescriptions or procedures must also offer a policy that does not provide that coverage. The bill also forbids all health insurers and HMOs from prohibiting coverage of mental health or therapeutic services to treat a person's perception that his or her sex is inconsistent with the person's sex at birth by affirming the insured's sex at birth.

Current law requires driver licenses and identification cards issued by the Department of Highway Safety and Motor Vehicles (DHSMV) to include the licensee's gender, among other information; however, current law does not define "gender" or outline procedures relating to the identification of a person's gender. CS/HB 1639 requires a driver's license or identification card to state the applicant's sex at birth, rather than gender.

The bill has an insignificant negative fiscal impact on the DHSMV and no fiscal impact on local government.

The bill has an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Gender Dysphoria

Transgender and gender nonconforming are general terms for individuals whose gender identity, role, or expression differ from their biological sex at birth.¹

Gender dysphoria refers to the significant discomfort or distress felt as a result of the gender incongruity.² Gender dysphoria is a behavioral health disorder diagnosable by a health care practitioner. The American Psychiatric Association's Diagnostic Statistical Manual of Mental Disorders (DSM) classification of gender dysphoria denote a "marked incongruence between one's experienced/expressed gender and assigned³ gender, of at least six months' duration" and manifestation of sub-criteria that differs based on age.⁴

Treatment

Treatment of gender dysphoria has evolved. Traditionally, gender identity issues were treated as a mental illness, with treatment primarily provided through psychotherapy to help patients become comfortable with their sex at birth.⁵

In the late 1990's, treatment began shifting to an "affirmative care model" after physicians in the Netherlands published a report on positive psychological outcomes for a transgender adolescent treated with hormones.⁶ Those physicians suppressed puberty in the early stages followed by cross-sex hormone therapy starting at age 16. This treatment model became known as the "Dutch Protocol".

The "Dutch Protocol", as well as the re-categorization of gender identity issues in the DSM, created a profound shift in the medically accepted treatment for gender issues. In 2013, the authors of the DSM replaced the term "gender identity disorder" with "gender dysphoria in children" and "gender dysphoria in adolescence and adults" to diagnose and treat the distress individuals felt by the incongruity between their gender identities and their bodies.⁷ The medical community stopped classifying gender identity issues as a mental illness. The "Dutch Protocol" was subsequently incorporated into the widely adopted standards of care for the treatment of transgender patients.⁸

The treatment goal now focuses on affirming the patient's gender identity rather than affirming the gender of the patient's sex at birth. Treatment for gender dysphoria now primarily addresses the

¹ Coleman, E., Radix, A.E., Bouman, W.P., Brown, G.R., de Vries, A.L.C., et al, (2022), Standards of Care for the Health of Transgender and Gender Diverse People, Version 8, *International Journal of Transgender Health*, 23(S1), S1-S260.

² *Id.*

³ The DSM uses "assigned" to refer to the delivery physician's assessment and notation of the child's biological sex, usually based on external genitalia. See American Psychiatric Association, *Gender Dysphoria*, available at, <https://www.psychiatry.org/patients-families/gender-dysphoria> (last viewed January 23, 2024).

⁴ American Psychiatric Association, (2013), *Diagnostic and Statistical Manual of Mental Disorders* (5th ed.), Arlington, VA: American Psychiatric Publishing.

⁵ See *Diagnostic and statistical manual of mental disorders*. 3rd ed. Washington, DC: American Psychiatric Publishing; 1980; *Diagnostic and statistical manual of mental disorders*. 4th ed. Washington, DC; American Psychiatric Publishing; 1994.

⁶ Cohen-Kettenis P.T., van Goozen S.H., (1998), Pubertal delay as an aid in diagnosis and treatment of a transsexual adolescent, *Eur Child Adolesc. Psychiatry*, 7(4):246-8.

⁷ The American Psychiatric Association stated that "it is important to note that gender nonconformity is not itself a mental disorder". *Supra* note 4.

⁸ *Supra* note 2; Hembree, W., Cohen-Kettenis, P., et al, (2017), Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline, *Journal of Clinical Endocrinology & Metabolism*, 102(11):2896-3903.

incongruency with psychotherapy and medical interventions that align the body with the mind, rather than the mind with the body. This treatment may include:⁹

- Psychotherapy to address the negative impact of gender dysphoria and mental health, which includes social transitioning to affirm an individual's felt gender identity, role, and expression.
- Puberty blockers to suppress the release of testosterone or estrogen and stop the onset of secondary sex characteristics.
- Cross-sex hormone therapy to feminize or masculinize the body.
- Sex reassignment surgery to change primary and/or secondary sex characteristics (e.g., breasts/chest, external and/or internal genitalize, facial features, and body contouring).

Concerns with Treatment

Clinicians and academics have raised concerns with the appropriateness of medical interventions for minors based on the lack of rigorous scientific research on the issue. Various issues bring the value of gender treatment research into question, specifically: many lack randomized control trials, use small sample sizes, and have a medium to high risk of bias due to recruitment design.¹⁰ From the perspective of some clinicians, there are no studies that sufficiently evaluate the long-term impact of medical treatments, so the long-term effects on physical developments, fertility, sexual function and brain development is unknown.¹¹

Limited research suggest access to puberty blockers and gender-affirming hormones may improve mental health outcomes, including reduced anxiety, depression, self-harm, and suicidality, in the short-term.¹² On the other hand, other research found a higher rate of suicide attempts and suicide completion in the short term, and much higher rates of suicide compared to the general population beginning 10 years post-transition.¹³

Researchers are just beginning to understand the unintended physical effects of transgender treatment. Puberty is a time of complex chemical changes that direct the development of many bodily functions. Taking puberty blockers at that time can prevent that development, with the possibility of significant future harms as an adult. For example, recent studies document the effect of puberty-blocking medications on bone development, causing severe lack of density, which may be irreversible.¹⁴ The long-term effect of puberty blockers and cross-sex hormone treatment on sexual function in adulthood requires further research. One literature review noted both positive and negative effects, but also noted that there is no valid tool to accurately measure sexual health outcomes.¹⁵ Similarly, researchers are beginning to express concerns about the impact on the brain, including permanent alterations to neurodevelopment.¹⁶

⁹ *Supra* note 3.

¹⁰ See Hruz, P., (2019), Deficiencies in Scientific Evidence for Medical Management of Gender Dysphoria, *The Linacre Quarterly* 87:1, 34-42.; Abbruzzese, E., Levine, S., Mason, J., (2023), The Myth of "Reliable Research" in Pediatric Gender Medicine: A critical evaluation of the Dutch Studies – and research that has followed, *Journal of Sex & Marital Therapy* DOI: 10.1080/0092623X.2022.2150346.

¹¹ *Supra* note 9.

¹² See Allen, L. R., Watson, L. B., Egan, A. M., Moser, C. N., (2019), Well-being and suicidality among transgender youth after gender-affirming hormones, *Clinical Practice in Pediatric Psychology*, 7(3), 302.

¹³ Dhejne C., Lichtenstein, P., Boman M., Johansson A., Långström N., Landén, M., (2011), Long-term follow-up of transsexual persons undergoing sex reassignment surgery: cohort study in Sweden, *PLoS One*, vol. 6, issue 2.

¹⁴ See, e.g., Joseph T, Ting J, Butler G. The effect of GnRH analogue treatment on bone mineral density in young adolescents with gender dysphoria: Findings from a large national cohort. *J Pediatr Endocrinol Metab*. 2019; 10: 1077– 1081; Lee J., et al, (2020), Low bone mineral density in early pubertal transgender/gender diverse youth: findings from the trans youth care study, *J Endocr Soc*. Sep 1; 4(9): bvaa065. In 2022, the Endocrine Society took the position that more research is needed in this area to properly address bone health in young patients. Endocrine Society, "Longer treatment with puberty-delaying medication in transgender youth leads to lower bone mineral density", June 12, 2022, available at <https://admin.endocrine.org/news-and-advocacy/news-room/2022/longer-treatment-with-puberty-delaying-medication-leads-to-lower-bone-mineral-density> (last viewed January 20, 2024).

¹⁵ Mattawanon N., Charoenkwan K., Tangpricha V., (2021), Sexual dysfunction in transgender people: a systematic review, *Urol Clin N Am* 48 (2021) 437–460. See, Shirazi TN, Self H, Dawood K, et al., Pubertal timing predicts adult psychosexuality: Evidence from typically developing adults and adults with isolated GnRH deficiency, *Psychoneuroendocrinology*. 2020; 104733:104733;

¹⁶ See, e.g., Chen D, Strang JF, Kolbuck VD, et al. Consensus parameter: Research methodologies to evaluate neurodevelopmental effects of pubertal suppression in transgender youth. *Transgender Health*. 2020; 4: 246– 257.

Regulation of Sex-Reassignment Prescriptions and Procedures in Florida

Current law regulates sex-reassignment prescriptions and procedures as a matter of practitioner licensure. These prescriptions and procedures include:¹⁷

- Puberty blockers prescribed to stop or delay normal puberty in order to affirm a person's perception of his or her sex if that perception is inconsistent with the person's sex;¹⁸
- Hormones or hormone antagonists prescribed to affirm a person's perception of his or her sex if that perception is inconsistent with the person's sex; and
- Medical procedures to affirm a person's perception of his or her sex if that perception is inconsistent the person's sex.

Current law prohibits sex-reassignment prescriptions and procedures for patients under age 18, with exceptions for minors actively receiving this treatment at the time the law was enacted in 2023. For adults, physicians must obtain specified informed consent on a form adopted by the Boards of Medicine and Osteopathic Medicine.¹⁹

Regulation of Insurers and Health Maintenance Organizations

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations (HMOs), and other risk bearing entities in Florida.²⁰ The Agency for Health Care Administration (AHCA) regulates the quality of care by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from AHCA.²¹

All persons who transact insurance in this state must comply with the Code.²² The OIR has the authority to collect, propose, publish, and disseminate any information relating to the subject matter of the Code,²³ and may investigate any matter relating to insurance.²⁴

A health insurance mandate is a legal requirement that an insurance company or health plan cover specific benefits, or services by particular health care providers, or specific patient groups. A contingent coverage mandate requires coverage of a service, condition, or provider's care *only if* coverage is provided for a certain other service, condition, or provider's care. In general, coverage mandates increase the cost of health coverage in varying amounts depending on the cost of the mandated care and the amount of patient utilization of that care.

Mandated offerings, on the other hand, do not mandate that certain benefits be provided. Rather, a mandated offering law requires that insurers offer an option for coverage for a particular benefit or specific patient groups, which may require an additional premium and which the consumer is free to accept or reject.

Current Florida law requires every person or organization seeking consideration of a legislative proposal which would mandate a health coverage or the offering of a health coverage by an insurer, to submit to the Agency for Health Care Administration and the legislative committees having jurisdiction, a report that assesses the social and financial impacts of the proposed coverage.²⁵ To the extent information is available, the report should address:

¹⁷ S. 456.08, F.S.

¹⁸ Under current law, a person's sex is indicated by a person's sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present at birth. S. 456.001(8), F.S.

¹⁹ S. 456.52, F.S.

²⁰ S. 20.121(3)(a), F.S.

²¹ S. 641.21(1)(1), F.S.

²² S. 624.11, F.S.

²³ S. 624.307(4), F.S.

²⁴ S. 624.307(3), F.S.

²⁵ S. 624.215, F.S.

- The extent to which the treatment or service is generally used by a significant portion of the population.
- The extent to which insurance coverage is generally available; or, if not generally available, results in persons avoiding necessary health care treatment.
- The extent to which lack of coverage results in unreasonable financial hardship.
- The level of public demand for the treatment or service.
- The level of public demand for insurance coverage of the treatment or service.
- The level of interest of collective bargaining agents in negotiating for the inclusion of this coverage in group contracts.
- The extent to which coverage will increase or decrease the cost of the treatment or service.
- The extent to which coverage will increase the appropriate uses of the treatment or service.
- The extent to which the treatment or service will be a substitute for a more expensive treatment or service.
- The extent to which the coverage will increase or decrease the administrative expenses of insurance companies and the premium and administrative expenses of policyholders.
- The impact of this coverage on the total cost of health care.

The House Health and Human Services Committee has not received a report for CS/HB 1639.

Currently, the Code does not regulate coverage of sex-reassignment prescriptions or procedures. The extent to which health insurers and HMOs provide coverage for sex-reassignment prescriptions or procedures is unknown.

State Driver Licenses and Identification Cards

Under Florida law, an application for the issuance of an identification card or a driver license from the Department of Highway Safety and Motor Vehicles (DHSMV) must include certain information, including the applicant's gender.²⁶ Additionally, a printed driver license issued by DHSMV to a driver must include, among other requirements, a licensee's gender and a space upon which the licensee shall affix his or her usual signature.²⁷ Florida law does not define "gender" in the context of driver license and identification card issuance.

Although not expressed in Florida law, the DHSMV Driver License Operations Manual governs how gender is determined for purposes of driver licenses and identification cards. Primarily, an applicant's gender is taken from the primary identification document, such as a birth certificate or a valid and non-expired United States passport. If a primary identification document does not list a gender, then the customer would specify which gender they most closely identify with for the use of the credential. Similarly, if the primary identification document indicates "nonbinary X" for gender, and the applicant presents no other primary resource documentation indicating gender, then the applicant would specify the gender they must closely identify with on the application.²⁸

To change a gender on a driver license or identification card²⁹, an applicant can present a credential from another state with the desired gender, a certified court order, or a signed statement on office letterhead from a physician or advanced practice nurse meeting certain criteria. The statement must include language stating that the applicant is undergoing clinical treatment for gender transition, and language declaring under penalty of perjury that the statement is true and correct.³⁰ The DHSMV follows standards established by the World Professional Association for Transgender Health.³¹

Effects of the Bill

²⁶ Ss. 322.051(1), F.S. and 322.08(2)(a), F.S.

²⁷ S. 322.14(1)(a), F.S.

²⁸ Florida Department of Highway Safety and Motor Vehicles, *Driver License Operations Manual, IR08.3 - Establishing Gender*.

²⁹ Other than for a clerical error.

³⁰ Florida Department of Highway Safety and Motor Vehicles, *Driver License Operations Manual, IR08.4 - Gender Change*.

³¹ *Id.* at p. 2

State Driver Licenses and Identification Cards

The bill replaces the statutory term “gender” with the term “sex”, as it relates to driver license and identification card issuance. Specifically, the bill provides that an application for the issuance of an identification card or a driver license from DHSMV must include the applicant’s sex. The bill defines “sex” as a person’s sex indicated at birth using a definition consistent with that used in health care practitioner licensure laws.³²

DHSMV will be required to amend operational policies to reflect these changes..

Regulation of Insurers and Health Maintenance Organizations

The bill authorizes insurers and HMOs to cover sex-reassignment prescriptions and procedures, for an additional premium, but imposes a contingent coverage mandate related to sex-reassignment coverage: a health insurer or HMO which covers sex-reassignment prescriptions or procedures must also cover treatment to treatments to de-transition from such prescriptions or procedures.

The impact of this provision is unclear, because the extent of sex-reassignment prescriptions or procedures coverage, and de-transition coverage, is unknown. Health insurers and HMOs providing both types of coverage will not be affected by the bill; similarly, those not providing covering for sex-reassignment prescriptions or procedures will be unaffected. Insurers and HMOs providing coverage for sex-reassignment prescriptions or procedures only, without de-transition coverage, may comply with the conditional mandate by either providing de-transition coverage, for an additional cost, or by eliminating coverage for sex-reassignment prescriptions or procedures (thereby eliminating the pre-condition that triggers the contingent mandate).

The bill also imposes a mandated offering: an insurer or HMO which issues a policy that provides coverage for sex-reassignment prescriptions and procedures must also offer a policy that does not provide such coverage. Again, it is unknown how many health insurers and HMOs issue policies that provide this coverage and so would be subject to the requirement to offer policies that do not cover it.

Finally, the bill forbids health insurers and HMOs from prohibiting coverage of mental health and therapeutic services to treat a person’s perception that his or her sex is inconsistent with sex at birth by affirming the person’s sex at birth.

The bill provides and effective date of July 1, 2024.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 322.01, F.S., relating to definitions.
- Section 2:** Amends 322.051, F.S., relating to identification cards.
- Section 3:** Amends 322.08, F.S., relating to application for licenses and identification cards.
- Section 4:** Amends 322.14, F.S.; relating to licenses issued to drivers.
- Section 5:** Creates 627.411, F.S.; relating to coverage for sex-assignment prescriptions or procedures.
- Section 6:** Amends 627.657, F.S; relating to provisions of group health insurance policies.
- Section 7:** Amends 627.6699, F.S.; relating to Employee Health Care Access Act.
- Section 8:** Amends 641.31, F.S; relating to health maintenance contracts.
- Section 9:** Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

³² See s. 456.001, F.S.
STORAGE NAME: h1639a.SHI
DATE: 1/23/2024

None.

2. Expenditures:

The bill has an insignificant fiscal impact on DHSMV for administrative costs to update driver license and identification card applications and printed driver licenses to refer to “sex” instead of “gender” and updating the operational manual, which can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

2. Not applicable. This bill does not appear to affect county or municipal governments.

3. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate, negative fiscal impact on health insurers and HMOs, depending on their current coverage options and offerings. Practitioners and facilities may experience an increase or decrease in demand for such services, depending on the extent of current coverage and the market response of health insurers and HMOs to the bill’s provisions.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments

2. Other:

The bill appears to make the contingent coverage mandate provision effective July 1, 2024, which may implicate the impairment of contract provisions of Art. 1 Sec. X of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

Current law provides sufficient rulemaking authority for OIR, AHCA and DHSMV to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

To avoid implicating the provisions of Art. 1 Sec. X of the Florida Constitution, the bill could be amended to make the insurance provisions effective for contracts entered into or renewed after January 1, 2025.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

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On January 22, 2024, the Select Committee on Health Innovation adopted an amendment and reported the bill favorably as a committee substitute.

The amendment adds a definition of “sex” for application throughout chapter 322 relating to state driver licenses and identification cards.

The analysis is drafted to the committee substitute as passed by the Select Committee on Health Innovation.