



2021 ASSEMBLY BILL 977

February 15, 2022 - Introduced by Representatives ALLEN, WICHGERS, KNODL, GUNDRUM, SKOWRONSKI, BEHNKE, BRANDTJEN, DITTRICH, MURPHY, PENTERMAN, SCHRAA and STEFFEN, cosponsored by Senators JACQUE, BERNIER and STROEBEL. Referred to Committee on Health.

1 **AN ACT** *to amend* 448.02 (3) (a); and *to create* 146.36 and 632.8983 of the
2 statutes; **relating to:** gender transition procedures.

Analysis by the Legislative Reference Bureau

This bill prohibits physician and health care providers from providing any gender transition procedure to an individual under 18 years of age. The bill also prohibits a physician or health care provider from referring an individual under 18 years of age to any other health care provider for any gender transition procedure. "Gender transition procedure" is defined in the bill as a medical or surgical service provided or performed for the purpose of assisting an individual with a physical gender transition.

Under the bill, no one may use public moneys for any entity, organization, or individual that provides any gender transition procedure to an individual under 18 years of age. Facilities owned by and health care providers employed by the state may not include gender transition procedures for individuals under 18 years of age in their provided health care services. Under the bill, amounts paid by an entity, organization, or individual for a gender transition procedure or for premiums for health care coverage that includes gender transition procedures is not tax deductible.

The bill prohibits the Department of Health Services from reimbursing or providing as a benefit under the Medical Assistance program any gender transition procedure for an individual under 18 years of age. The bill also prohibits a health insurance policy or self-insured governmental health plan from providing coverage of any gender transition procedure for an individual under 18 years of age. Health insurance policies are referred to in the bill as disability insurance policies.

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The bill specifies that a violation of the prohibitions on providing to an individual under 18 years of age, or referring an individual under 18 years of age for, a gender transition procedure is presumed to be reckless conduct for purposes of civil liability. The bill explicitly allows an individual injured by such a violation or a parent, guardian, or legal representative of an injured individual to bring a claim for any of the damages specified in the bill. The action must be commenced before 30 years after the date the injured individual reached the age of 18. A legal disability of the injured individual when the individual attains the age of 18 tolls the time to bring the action until the disability is resolved. Any time during which the injured individual is subject to threats, intimidation, manipulation, fraudulent concealment, or fraud by the physician or health care provider involved in the gender transition procedure or a person acting in that physician's or health care provider's interest also tolls the time to bring the action. Under the bill, an allegation that a physician violated either of the prohibitions on providing to an individual under 18 years of age, or referring an individual under 18 years of age for, a gender transition procedure is considered an allegation of unprofessional conduct, and the Medical Examining Board is required to investigate allegations of unprofessional conduct. The attorney general and any district attorney is also authorized to bring an action to enforce the bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 146.36 of the statutes is created to read:

2 **146.36 Gender transition procedures. (1) DEFINITIONS.** In this section:

3 (a) "Biological sex" means the biological indication of male or female in the
4 context of reproductive potential or capacity, such as by sex chromosomes, naturally
5 occurring sex hormones, gonads, and unambiguous internal and external genitalia
6 present at birth, without regard to psychological, chosen, or subjective experience of
7 gender.

8 (b) "Cross-sex hormones" means any of the following:

9 1. Testosterone or other androgens given to biological females in amounts that
10 are larger or more potent than would normally occur naturally in healthy biological
11 females.

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1 2. Estrogen given to biological males in amounts that are larger or more potent
2 than would normally occur naturally in healthy biological males.

3 (c) “Gender reassignment surgery” means any medical or surgical service that
4 seeks to surgically alter or remove healthy physical or anatomical characteristics or
5 features that are typical for an individual’s biological sex in order to instill or create
6 physiological or anatomical characteristics that resemble a sex different from the
7 individual’s biological sex, including genital gender reassignment surgery or
8 nongenital gender reassignment surgery performed for the purpose of assisting an
9 individual with a gender transition.

10 (d) “Gender transition” means a process, which may involve social, legal, or
11 physical changes, in which an individual goes from identifying with and living as a
12 gender that corresponds with the individual’s biological sex to identifying with and
13 living as a gender different from the individual’s biological sex.

14 (e) 1. “Gender transition procedure” means any medical or surgical service
15 provided or performed for the purpose of assisting an individual with a physical
16 gender transition.

17 2. “Gender transition procedure” includes any physician’s service, inpatient
18 and outpatient hospital service, puberty-blocking drug, cross-sex hormone, genital
19 gender reassignment surgery, or nongenital gender reassignment surgery.

20 3. “Gender transition procedure” does not include any of the following:

21 a. A service provided to individuals who are born with a medically verifiable
22 disorder of sex development, including individuals with external biological sex
23 characteristics that are irresolvably ambiguous, such as those born with 46,XX
24 karyotype with virilization, born with 46,XY karyotype with under virilization, or
25 having both ovarian and testicular tissue.

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1 b. A service provided when a physician has diagnosed a disorder of sexual
2 development by determining, through genetic or biochemical testing, that the
3 individual does not have normal sex chromosome structure, sex steroid hormone
4 production, or sex steroid hormone action.

5 c. The acute or chronic treatment of any infection, injury, disease, or disorder
6 that has been caused by or exacerbated by the performance of a gender transition
7 procedure, whether or not the gender transition procedure was performed in
8 accordance with state and federal law and whether or not funding for the gender
9 transition procedure is permissible under this section.

10 d. Any procedure undertaken because the individual suffers from a physical
11 disorder, physical injury, or physical illness that would, as certified by a physician,
12 place the individual in imminent danger of death or impairment of a major bodily
13 function unless surgery is performed.

14 (f) “Genital gender reassignment surgery” means a medical procedure,
15 including any of the following surgical procedures, that is performed for the purpose
16 of assisting an individual with a physical gender transition:

17 1. For individuals of male biological sex, a penectomy, an orchiectomy, a
18 vaginoplasty, a clitoroplasty, or a vulvoplasty.

19 2. For individuals of female biological sex, a hysterectomy, an oophorectomy,
20 a reconstruction of the urethra, a metoidioplasty or phalloplasty, a vaginectomy, a
21 scrotoplasty, or an implantation of erectile or testicular prostheses.

22 (g) “Health care provider” has the meaning given in s. 146.81 (1) (a) to (hp).

23 (h) “Nongenital gender reassignment surgery” means a medical procedure,
24 including any of the following surgical procedures, that is performed for the purpose
25 of assisting an individual with a physical gender transition:

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1 1. For individuals of male biological sex, augmentation mammoplasty, facial
2 feminization surgery, liposuction, lipofilling, voice feminization surgery, thyroid
3 cartilage reduction, gluteal augmentation, hair reconstruction, or any of various
4 aesthetic procedures.

5 2. For individuals of female biological sex, subcutaneous mastectomy, voice
6 masculinization surgery, liposuction, lipofilling, pectoral implants, or various
7 aesthetic procedures.

8 (i) "Puberty-blocking drug" means any of the following when used to delay or
9 suppress pubertal development in children for the purpose of assisting an individual
10 with a gender transition:

11 1. A gonadotropin-releasing hormone analogue or other synthetic drug used
12 in biological males to stop luteinizing hormone secretion and, therefore, testosterone
13 secretion.

14 2. A synthetic drug used in biological females to stop the production of estrogen
15 and progesterone.

16 (j) "Public funds" means any moneys of the state, a county or local government,
17 or any department, agency, or instrumentality authorized or appropriated under
18 state law or derived from any fund in which moneys are deposited.

19 **(2) PROHIBITING GENDER TRANSITION ON MINORS.** (a) No physician or health care
20 provider may provide any gender transition procedure to any individual under 18
21 years of age.

22 (b) No physician or health care provider may refer any individual who is under
23 18 years of age to any other physician or health care provider for any gender
24 transition procedure.

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1 **(3) PROHIBITING USE OF PUBLIC FUNDS FOR GENDER TRANSITION OF MINORS.** (a) No
2 person may use public funds directly or indirectly for or grant, pay, or distribute
3 public funds to any entity, organization, or individual that provides any gender
4 transition procedure to an individual under 18 years of age.

5 (b) None of the following may include any gender transition procedure provided
6 to an individual under 18 years of age in the health care services it provides:

7 1. A facility owned by the state or a county or local government.

8 2. A physician or health care provider who is employed by the state or a county
9 or local government.

10 (c) The department may not reimburse or include as a benefit under the
11 Medical Assistance program under subch. IV of ch. 49 any gender transition
12 procedure for an individual under 18 years of age.

13 **(4) TAX DEDUCTION PROHIBITED.** Any amount paid during a taxable year by an
14 entity, organization, or individual to provide a gender transition procedure or as
15 premiums for health care coverage that includes coverage for a gender transition
16 procedure is not tax deductible.

17 **(5) CIVIL LIABILITY.** (a) Any violation of sub. (2) is presumed to be reckless
18 conduct for purposes of civil liability. The party injured by a violation of sub. (2) or
19 a parent, guardian, or legal representative of the injured party may bring a claim for
20 any of the following damages:

21 1. Any compensatory damages, including damages for pain and suffering, loss
22 of reputation, loss of income, and loss of consortium, including loss of expectation of
23 sharing parenthood.

24 2. Injunctive relief.

25 3. Declaratory relief.

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1 4. Punitive damages.

2 5. Any other appropriate relief.

3 6. If the prevailing party, reasonable attorney's fees notwithstanding s. 814.04
4 (1).

5 (b) A party may commence an action under par. (a) regardless of whether or not
6 available administrative remedies have been sought or exhausted.

7 (c) The attorney general and any district attorney may bring an action to
8 enforce compliance with this section.

9 (d) Nothing in this section shall be construed to deny, impair, or otherwise affect
10 any right or authority of the attorney general, the state, or any agency, officer, or
11 employee of the state to institute or intervene in any proceeding.

12 **(6) LIMITATION OF ACTIONS.** Notwithstanding any limitation under ch. 893, an
13 action to recover damages caused by an act that would constitute a violation of sub.
14 (2) shall be commenced before the date that is 30 years after the date the injured
15 party attains the age of 18 or be barred. If the injured party has a legal disability on
16 the date the injured person attains the age of 18, the statute of limitations under this
17 subsection is tolled until the disability is resolved. The statute of limitations under
18 this subsection is tolled during any time the injured party is subject to threats,
19 intimidation, manipulation, fraudulent concealment, or fraud by the physician,
20 health care provider, or person acting in the interest of the physician or health care
21 provider that provided any gender transition procedure.

22 **SECTION 2.** 448.02 (3) (a) of the statutes, as affected by 2021 Wisconsin Act 23,
23 is amended to read:

24 448.02 **(3)** (a) The board shall investigate allegations of unprofessional conduct
25 and negligence in treatment by persons holding a license or certificate granted by the

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1 board. An allegation that a physician has violated s. 146.36 (2), 253.10 (3), 448.30
2 or 450.13 (2) or has failed to mail or present a medical certification required under
3 s. 69.18 (2) within 21 days after the pronouncement of death of the person who is the
4 subject of the required certificate or that a physician has failed at least 6 times within
5 a 6-month period to mail or present a medical certificate required under s. 69.18 (2)
6 within 6 days after the pronouncement of death of the person who is the subject of
7 the required certificate is an allegation of unprofessional conduct. Information
8 contained in reports filed with the board under s. 49.45 (2) (a) 12r., 50.36 (3) (b),
9 609.17 or 632.715, or under 42 CFR 1001.2005, shall be investigated by the board.
10 Information contained in a report filed with the board under s. 655.045 (1), as created
11 by 1985 Wisconsin Act 29, which is not a finding of negligence or in a report filed with
12 the board under s. 50.36 (3) (c) may, within the discretion of the board, be used as the
13 basis of an investigation of a person named in the report. The board may require a
14 person holding a license or certificate to undergo and may consider the results of one
15 or more physical, mental or professional competency examinations if the board
16 believes that the results of any such examinations may be useful to the board in
17 conducting its investigation.

18 **SECTION 3.** 632.8983 of the statutes is created to read:

19 **632.8983 Prohibiting gender transition procedure coverage for**
20 **minors. (1)** In this section:

21 (a) "Disability insurance policy" has the meaning given in s. 632.895 (1) (a).

22 (b) "Gender transition procedure" has the meaning given in s. 146.36 (1) (e).

23 **(2)** No disability insurance policy and no self-insured health plan of the state
24 or of a county, city, town, village, or school district may provide coverage of any gender
25 transition procedure for an individual under 18 years of age.

