More US states ban teenagers' gender-affirming care

Most health-care provider organisations oppose the bans, calling them harmful. Susan Jaffe reports from Washington, DC.

With the last-minute approval of the Texas Supreme Court earlier this month, Texas became the latest and largest US state among 22 to ban gender-affirming care for people younger than 18 years. The prohibition applies to medically necessary surgery, hormone therapy, and puberty blockers.

Similar efforts are underway across the country, despite numerous health-care provider groups saying that adolescents should be able to access these safe and effective treatments, with the exception of surgery, which is rarely provided to minors. The American Medical Association urged governors to reject state bans in a 2021 letter to the National Governors Association: "We believe it is inappropriate and harmful for any state to legislatively dictate that certain transition-related services are never appropriate and limit the range of options physicians and families may consider when making decisions for pediatric patients." In guidance for physicians, the American College of Obstetricians and Gynecologists "supports the provision of appropriate and evidence-based care for transgender and gender diverse adolescents". Mark Del Monte, CEO and Executive Vice President of the American Academy of Pediatrics, said in August that: "We will also sustain focus on the young people and what they need to be who they are and live happy lives—this is too often overlooked when politics intrudes."

These laws put doctors in a difficult position because they are "at odds with their oath and their ethics", said Jason Rafferty, a psychiatrist and paediatrician who is also Chair of the American Academy of Pediatrics Section on LGBT Health and Wellness. Several states have made it a crime to provide minors with gender-affirming care that ranges from hormone therapy and puberty blockers to surgical procedures. "Nobody goes into medicine to be a criminal", he said. "We go into paediatrics really to do the best that we can for these kids and to care for them in the most compassionate way possible."

The state prohibitions also make it difficult for parents to make decisions about the health care of their children, said Reverend Jasmine Beach-Ferrara, Executive Director of the Campaign for Southern Equality, a group that focuses on protecting LGBTQ rights in the southern USA. Increasing anti-transgender laws are part of a conservative backlash to "the highest level of public support we've ever seen for LGBTQ equality", she said. That support extends to marriage equality and protections against employment and housing discrimination as "greater numbers of LGBTQ people are coming out, including young people coming out at younger ages, as transgender and also around their sexual orientation".

Even in California, often considered to be a liberal stronghold, conservative activists and legislators are seeking voters' signatures on petitions to put three anti-transgender proposals on the 2024 election ballot. One would require schools to tell parents if their child uses a different name or pronouns and another would ban transgender girls from competing in girls' sports. The third initiative "prevents the sterilization of children by prohibiting the use of puberty blockers, cross-sex hormones, mastectomies and genital surgeries for minors", according to the website of Protect Kids California.

At the federal level, a House of Representatives committee in July approved a provision to the legislation that funds training for paediatricians at children's hospitals that would prohibit those hospitals from providing gender-affirming care. "There is no other human rights atrocity in America that is so quickly gaining momentum and validation within the very institutions that should know better", said the sponsor of the measure, Texas Republican Dan Crenshaw.

Under the Texas law, doctors can lose their medical licences if they provide medication or surgery "for the purpose of transitioning a child's biological sex", although there are exceptions for treatment of genetic sexual developmental atypicality or premature puberty. And adolescent patients can continue taking medication prescribed before the ban took effect. Other state bans have similar exceptions. In five of the other 22 states with bans, doctors can be criminally prosecuted for violations, although enforcement in three states has been temporarily suspended due to legal challenges, according to an analysis by the Movement Advancement Project .

For the **Movement Advancement Project analysis** see https://www.mapresearch.org/equality-maps/healthcare/youth_medical_care_bans

An estimated 106 200 adolescents aged 13–17 years (and up to age 19 years in two states) currently live in the 22 states that have enacted bans, said Elana Redfield, Federal Policy Director at the Williams Institute, a think tank based at the University of California, Los Angeles School of Law that focuses on LGBT law and policy. Nationwide, the institute reports that about 300 100 people younger than 18 years identify as transgender, compared with 1·3 million adults. The population of adult transgender people is about 0·52% of all adults in the USA.

The number of transgender people receiving some form of treatment is difficult to track, said Redfield. In addition to the state restrictions, many transgender people are not identifiable in health records, national health-care statistics are incomplete, and some forms of treatment are not covered by health insurance.

For the **cohort study** see *JAMA Netw Open* 2023; **6**(8): e2330348

For the **American Academy of Pediatrics care model** see *Pediatrics* 2018; **142** (4): e20182162.

However, a study published on Aug 23 in *JAMA Network Open* estimated that only 7·7% of adolescents aged 12–18 years received gender-affirming surgery from 2016–20 in a sample of 48 019 people in the USA who were diagnosed with gender identity disorder, transsexualism, or had a history of sex reassignment. The youngest cohort was also the group least likely to undergo surgery, whereas people aged 19–30 years were most likely to undergo surgery, representing 52·3% of surgical care.

These findings are consistent with a previous study "that demonstrated that most patients first experience gender dysphoria at a young age, with approximately three-quarters of patients reporting gender dysphoria by age 7 years", the authors wrote. "These patients subsequently lived for a mean of 23 years for transgender men and 27 years for transgender women before beginning gender transition treatments."

In August, the American Academy of Pediatrics reaffirmed its 2018 "gender-affirmative care model" and treatment policies that Rafferty drafted and revised in conjunction with two Academy committees. The document defines key concepts and terms, provides research and expert opinions, and reviews mental health implications and medical management options. It also describes how doctors can provide "developmentally appropriate care that is oriented toward understanding and appreciating the youth's gender experience".

Puberty blockers and other medication interventions are important "to slow down the process to really allow for greater understanding, both in terms of the decision making capacity, but also greater understanding of that young person's sense of identity, which is also evolving throughout adolescence", said Rafferty.

The guidance also recommends taking a holistic and multidisciplinary approach to evaluate the need for medical intervention, and whether the person has emotional and family support and "social affirmation" at home and at school. That support can include use of the child's preferred name and pronouns. "I sometimes see kids come in, that are so distressed, that their safety is at risk", said Rafferty. "And in that situation, assuring their safety is the number one concern, not necessarily affirming their gender."

The guidance also rejects "the outdated approach" of watchful waiting, which can mean withholding crucial care. It presumes that a child's "gender-diverse assertions" are only valid once the child has reached a specific age, often after the onset of puberty. "Research substantiates that children who are prepubertal and assert an identity of TGD [transgender and gender diverse] know their gender as clearly and as consistently as their developmentally equivalent peers who identify as cisgender and benefit from the same level of social acceptance", the guidance says.

In medical matters involving children, "the default is parents decide", said Lois Weithorn, a professor at the University of California Law San Francisco where she specialises in bioethics, health-care decision making, and children in the law. "It's highly unusual for a state to identify a particular category of treatment and take it completely out of parental control to make decisions", she said. "And what is even more unusual is to do that in situations where the consensus of medical experts is that the treatment is safe and effective", as is the case for gender-affirming care. In rare situations, states can override parental rights to allow minors to independently seek, for example, HIV testing and treatment, substance misuse treatment, contraception, and prenatal care. And some states allow minors access to abortion without parental consent in certain circumstances.

Whether states can prohibit minors from receiving gender-affirming care—even when parents want them to receive it—is an open question, she said. In lawsuits that are going through state courts, opponents argue that state bans violate "the very robust right" of parents' constitutional authority to make health-care decisions for their children. Opponents also claim that the bans violate the constitutional guarantee of equal protection under the law by discriminating against children due to their sex or gender. Those supporting the bans have argued that there is not sufficient evidence showing that gender-affirming care is safe for minors.

"There are many areas of health care where we don't have all the answers and there is continued research", she said. "But when there are risks and benefits to consider, together with a very compelling need to address a problem now with a sense of urgency, and given the risks of doing nothing, the argument would be that the balancing of risks and benefits is a decision that rests with the family together with the medical and mental health professionals they turn to for recommendations."

Advocates for state restrictions also claim that adolescents are not capable of making decisions about their medical care. Weithorn counters that they will not be making those decisions alone. Almost all states permitting gender-affirming care for minors also require parental consent. "When minors have the opportunity to deliberate and consult with supportive adults, this maximizes their use of their cognitive and socio-emotional skills to make good decisions."

Some state courts have issued conflicting decisions on the bans, ensuring that an appeal will eventually reach the US Supreme Court. If the justices follow their reasoning in their ruling on the federal right to abortion, the matter will be for the states to decide, with patients who can afford it travelling to states that allow doctors to provide the care they cannot get at home.

Susan Jaffe