



# IMPACT OF THE BAN ON GENDER- AFFIRMING CARE on Transgender Minors

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On January 28, President Trump issued an executive order aimed at restricting access to gender-affirming health care for minors.<sup>1</sup> The order calls for a complete reversal of federal support for gender-affirming care for youth under age 19. This policy brief explores the scope of the executive order and the potential impact on transgender and youth.

## GENDER-AFFIRMING HEALTH CARE

Gender-affirming care commonly refers to health services that support a person in living in alignment with their gender identity when their gender identity differs from their sex assigned at birth.<sup>2</sup> This care may include the use of hormones to delay puberty in adolescents and to promote the development of secondary sex characteristics that are consistent with a person's gender identity or, in some cases, various surgical interventions.<sup>3</sup> Such treatments are considered evidence-based<sup>4</sup> and typically follow standardized practice protocols,<sup>5</sup> which have been reviewed and

<sup>1</sup> Exec. Order, Protecting Children from Chemical and Surgical Mutilation, The White House, Jan. 28, 2025, <https://www.whitehouse.gov/presidential-actions/2025/01/protecting-children-from-chemical-and-surgical-mutilation/>.

<sup>2</sup> See generally, E. Coleman, et al., Standards of Care for the Health of Transgender and Gender Diverse People, Version 8, 23 INT. J. TRANSGEND. HEALTH S1 (2022) (also known as the "World Professional Association for Transgender Health Standards of Care").

<sup>3</sup>Id.

<sup>4</sup> See e.g. Stephanie L. Budge, et al., *Gender Affirming Care Is Evidence Based for Transgender and Gender-Diverse Youth*, 75 J. ADOLESC HEALTH 851 (2024); MEREDITH McNAMARA ET AL., AN EVIDENCE-BASED CRITIQUE OF "THE CASS REVIEW" ON GENDER-AFFIRMING CARE FOR ADOLESCENT GENDER DYSPHORIA (2024), [https://law.yale.edu/sites/default/files/documents/integrity-project\\_cass-response.pdf](https://law.yale.edu/sites/default/files/documents/integrity-project_cass-response.pdf); c.f. THE CASS REVIEW, FINAL REPORT: INDEPENDENT REVIEW OF GENDER IDENTITY SERVICES FOR CHILDREN AND YOUNG PEOPLE (2024), [https://cass.independent-review.uk/wp-content/uploads/2024/04/CassReview\\_Final.pdf](https://cass.independent-review.uk/wp-content/uploads/2024/04/CassReview_Final.pdf).

<sup>5</sup> For example, the Endocrine Society recommends hormone use for youth with a diagnosis of gender dysphoria – defined by the American Psychiatric Association in the Diagnostic Statistical Manual DSM-5-TR as "a marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months duration" who have entered puberty. Wylie C. Hembree, et. al, *Endocrine Treatment of Gender-Dysphoric/ Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. OF CLINICAL ENDOCRINOLOGY & METABOLISM 3869-903 (2017); *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR)* American Psychiatric Association (2022); See also E. Coleman, et al., Standards of Care for the Health of Transgender and Gender Diverse People, *supra* note 2 (standards of care for transgender

refined over the course of over 40 years.<sup>6</sup> Although President Trump's executive order describes gender-affirming care as "junk science,"<sup>7</sup> access to gender-affirming care for transgender youth is supported by a consensus of major medical associations in the U.S.<sup>8</sup> The order does not acknowledge any benefits of gender-affirming care, instead making unsubstantiated statements of widespread harm<sup>9</sup> and disregarding decades of science that form the foundation of the services that are currently available to transgender youth.<sup>10</sup>

## IMPLEMENTATION OF PRESIDENTIAL EXECUTIVE ORDERS AND POLICIES

A key function of executive orders is political messaging.<sup>11</sup> Executive orders can have practical impacts, but there are limits on what a president can do through this medium.<sup>12</sup> Most importantly, an executive order must be supported by authority the president derives from the Constitution or through an express delegation from Congress by statute.<sup>13</sup> Additionally, implementation is often not immediate. This is because an executive order often takes the form of a directive to federal agencies or offices under the executive branch, each of which would have to conduct internal assessments and consider actions such as rulemaking.<sup>14</sup> Here, President Trump's order largely takes this approach.<sup>15</sup> However, executive orders may also have a more immediate impact in instances where formal rulemaking is not required<sup>16</sup> or by taking actions that may encounter fewer procedural constraints.<sup>17</sup> For example, this executive order directs the Department of Health and Human Services to rescind a Biden administration

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youth and adults); Wylie C. Hembree, et. al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*. 102 J. OF CLINICAL ENDOCRINOLOGY & METABOLISM 3869-903 (2017); Jason Rafferty, et. al., AM. ACAD. OF PEDIATRICS COMM. ON PSYCHOSOCIAL ASPECTS OF CHILD & FAM. HEALTH, AAP COMM. ON ADOLESCENCE, AAP SECTION ON LESBIAN, GAY, BISEXUAL, AND TRANSGENDER HEALTH AND WELLNESS, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142 PEDIATRICS 1-14 (2018).

<sup>6</sup> See *Standards of Care 8: History and Purpose*, WORLD PROF. ASS'N. FOR TRANSGENDER HEALTH, <https://wpath.org/publications/soc8/soc8-history/>.

<sup>7</sup> Exec. Order, Protecting Children from Chemical and Surgical Mutilation, *supra* note 1, § 3.

<sup>8</sup> GLAAD, Medical Association Statements in Support of Health Care for Transgender People and Youth (June 26, 2024), <https://glaad.org/medical-association-statements-supporting-trans-youth-healthcare-and-against-discriminatory/>; See also Press Release, Am. Med. Ass'n., AMA to States: Stop Interfering in the Health Care of Transgender Children (April 26, 2021), <https://www.ama-assn.org/press-center/press-releases/ama-states-stop-interfering-health-care-transgender-children>.

<sup>9</sup> *Id.* § 1.

<sup>10</sup> *Id.* § 3.

<sup>11</sup> Josh Boak, *What is an Executive Order? Here's What the Tool Can and Can't Do*, PBS NEWS (JAN. 20, 2025), <https://www.pbs.org/newshour/politics/what-is-an-executive-order-a-look-at-trumps-tool-for-quickly-reshaping-government>.

<sup>12</sup> Abigail A. Graber, *Executive Orders: An Introduction*, CONG. RES. SERV. (March 29, 2021), <https://crsreports.congress.gov/product/pdf/R/R46738>.

<sup>13</sup> *Id.* at 8-12.

<sup>14</sup> See e.g. Brendan Pierson, *What Are Executive Orders and How Can Trump Use Them?* REUTERS (Jan. 14, 2025), <https://www.reuters.com/world/us/what-can-trump-do-through-executive-orders-2025-01-14/>.

<sup>15</sup> Exec. Order, Protecting Children from Chemical and Surgical Mutilation, *supra* note 1.

<sup>16</sup> See e.g. Phil Mattingly, *Trump's Team Outlines Suite of Executive Orders to Top Lawmakers Ahead of his First Day as President*, CNN.COM (Jan. 19, 2025), <https://www.cnn.com/2025/01/19/politics/trump-executive-orders-lawmakers-day-1/index.html>; See also Ben Wilhelm, *Executive Orders and Presidential Transitions*, CONG. RES. SERV. (July 30, 2024), <https://crsreports.congress.gov/product/pdf/IF/IF12724>; Kate R. Bowers & Daniel J. Sheffner, *Agency Recissions of Legislative Rules*, CONG. RES. SERV. (Feb. 8, 2021), <https://crsreports.congress.gov/product/pdf/R/R46673#:~:text=For%20example%2C%20an%20agency%20is,published%20in%20the%20Federal%20Register>.

<sup>17</sup> Candace Norwood, *The 19th Explains: What to Know About Executive Orders as Trump Prepares to Take Office*, The 19th (Jan. 15, 2025), <https://19thnews.org/2025/01/what-are-executive-orders-trump-second-term/>; See also, Brendan Pierson, *What Are Executive Orders and How Can Trump Use Them?*, *supra* note 14.

guidance document supporting access to gender-affirming care, which could be done more quickly than formal rulemaking.<sup>18</sup> Additionally, it is possible that the Department of Justice may move quickly in response to the executive order.<sup>19</sup>

## SCOPE AND REACH OF THE EXECUTIVE ORDER ON GENDER-AFFIRMING CARE

The primary function of this executive order is to prohibit federal support for the provision of gender-affirming care to minors, who are defined, in the order, as youth under 19 years of age.<sup>20</sup> The order does this through several interrelated actions:

- First, the order redefines gender-affirming care using harmful and inaccurate terms (“chemical and surgical mutilation”).<sup>21</sup> The order then directs federal agencies to stop relying on the guidelines developed over decades by experts in gender-affirming care.<sup>22</sup> Instead, the order directs the Department of Health and Human Services (“HHS”) to publish a summary of research findings related to providing care for children who, as described by the order, “assert gender dysphoria, rapid-onset gender dysphoria, or other identity-based confusion.”<sup>23</sup> Notably, rapid-onset gender dysphoria is not a formal diagnosis and is not supported by credible research.<sup>24</sup> In fact, the vast majority of research on gender-affirming care refutes the administration’s characterization and supports access to care; therefore, the order appears to direct the Department to produce a tailored literature review prioritizing research that has been deemed by national experts in the treatment of gender dysphoria to be inaccurate and unreliable.<sup>25</sup> The executive order also directs HHS to further its goals by taking action (ambiguously) with respect to diagnostic manuals that received federal funding, including the International Classification of Diseases and the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition.<sup>26</sup>

<sup>18</sup> Exec. Order, Protecting Children from Chemical and Surgical Mutilation, *supra* note 1; See also *HHS Notice and Guidance on Gender Affirming Care*, U.S. DEP’T. OF HEALTH & HUM. SERV. (March 2, 2022), <https://www.hhs.gov/sites/default/files/hhs-ocr-notice-and-guidance-gender-affirming-care.pdf> (vacated by court on October 1, 2022).

<sup>19</sup> For example, the Department of Education’s Office for Civil Rights opened an investigation into a Denver, Colorado School District within days of the President’s executive order redefining “sex.” See Jessica Seaman, *Trump Administration to Investigate DPS for Converting Girls Restroom to All-gender Bathroom*, The Denver Post (Jan. 28, 2025), <https://www.denverpost.com/2025/01/28/trump-investigation-dps-all-gender-restroom-discrimination/>.

<sup>20</sup> Exec. Order, Protecting Children from Chemical and Surgical Mutilation, *supra* note 1, § 2(a).

<sup>21</sup> This description is inaccurate for a number of reasons. For example, many patients find that gender-affirming care improves their well-being. See *What Does the Scholarly Research Say about the Effect of Gender Transition on Transgender Well-Being?* WHAT WE KNOW PROJECT (2018), <https://whatweknow.inequality.cornell.edu/topics/lgbt-equality/what-does-the-scholarly-research-say-about-the-well-being-of-transgender-people/>. Additionally, the vast majority of transgender youth never undergo surgical interventions, which calls into question the meaning of the word “mutilation” as used here. See e.g. Dannie Dai, Brittany M. Charlton, and Elizabeth R. Boskey, *Prevalence of Gender-Affirming Surgical Procedures Among Minors and Adults in the US*, 7 JAMA NETW. OPEN e2418814 (2024) (“these findings suggest that concerns around high rates of gender-affirming surgery use, specifically among TGD minors, may be unwarranted. Low use by TGD people likely reflects adherence to stringent standards of gender-affirming care.”).

<sup>22</sup> Exec. Order, Protecting Children from Chemical and Surgical Mutilation, *supra* note 1, § 3. The executive order refers to the World Professional Association for Transgender Health’s Standards of Care. See E. Coleman et al., *supra* note 2; *Standards of Care 8: History and Purpose*, *supra* note 6.

<sup>23</sup> Exec. Order, Protecting Children from Chemical and Surgical Mutilation, *supra* note 1, § 3(a)(2).

<sup>24</sup> See e.g. Timmy Broderick (ed. Allison Parshall), *Evidence Undermines ‘Rapid Onset Gender Dysphoria’ Claims*, SCIENTIFIC AM. (Aug. 24, 2023), <https://www.scientificamerican.com/article/evidence-undermines-rapid-onset-gender-dysphoria-claims/>

<sup>25</sup> See e.g. MEREDITH MCNAMARA ET AL., *supra* note 4.

<sup>26</sup> Exec. Order, Protecting Children from Chemical and Surgical Mutilation, *supra* note 1, § 5(a)(vii).

- Next, the order prohibits federal agencies from engaging in activities that would support access to care. HHS is directed to “take all appropriate action” to end access to gender-affirming care, including “regulatory and sub-regulatory action.”<sup>27</sup> The executive order directs attention to several program areas, including Medicaid, Medicare, nondiscrimination, quality, safety, and essential health benefits guidance.<sup>28</sup> The order directs the Department of Defense to issue regulations excluding coverage under the Military’s TRICARE program, which already excludes gender-affirming care up to age 17 under the 2024 National Defense Authorization Act.<sup>29</sup> Furthermore, all agencies are directed to ensure that medical institutions receiving research and education grants do not provide gender-affirming care.<sup>30</sup> Additionally, coverage for such care is excluded under federal employee benefits programs.<sup>31</sup>
- The order also directs the Department of Justice to “prioritize enforcement of protections against female genital mutilation” (appearing to erroneously conflate gender-affirming treatments with female genital mutilation), convene state attorneys general and work with them to enforce related state laws, work with Congress to enact a law providing a cause of action against doctors prescribing gender-affirming care for minors “with a lengthy statute of limitations,” and to “take appropriate action to end child-abusive practices by so-called sanctuary States that facilitate stripping custody from parents who support the healthy development of their own children.”<sup>32</sup>

Some of the actions requested of the Department of Justice may take effect quickly. However, as noted above, implementing the full agenda in this order will likely take time. Due to the various powers and responsibilities of Congress and courts regarding civil rights and medical interventions, the president may not be able to sustain all of the actions described in the order indefinitely.<sup>33</sup> Furthermore, the legal landscape for gender-affirming care is quite complex, implicating both federal and state laws, and there is extensive litigation around access to the care, as described below. Additionally, many of the actions contained in this order will likely be challenged in court.

However, the president’s order will likely at least limit the availability of gender-affirming care or make it more difficult to access in the short term<sup>34</sup> and could increase risk for both providers and recipients of the care.<sup>35</sup> Additionally, gender-affirming care for minors has been a persistent subject of legislation in Congress in recent years. Both houses of the previous Congress considered federal bans on gender-affirming care for minors,<sup>36</sup> and the

<sup>27</sup> *Id.* § 5.

<sup>28</sup> *Id.* §§ 5(a)(i), 5(a)(iv), 5(a)(v), & 5(a)(vi).

<sup>29</sup> H.R. 2670, 118th Cong. (2024) (enacted); See also Bryce H.P. Mendez, FY2025 NDAA: TRICARE Coverage of Gender-Affirming Care, CONG. RES. SERV. (Jan. 10, 2025), <https://crsreports.congress.gov/product/pdf/IN/IN12401>.

<sup>30</sup> Exec. Order, Protecting Children from Chemical and Surgical Mutilation, *supra* note 1, § 4. Notably, this provision resembles a bill proposed in the House of Representatives that would have denied graduate education funding to children’s hospitals that provide gender-affirming care. H.R. 3887, 118th Cong. (2023).

<sup>31</sup> Exec. Order, Protecting Children from Chemical and Surgical Mutilation, *supra* note 1, § 7.

<sup>32</sup> *Id.* § 8.

<sup>33</sup> See e.g. Brendan Pierson, *What Are Executive Orders and How Can Trump Use Them?* REUTERS (Jan. 14, 2025), <https://www.reuters.com/world/us/what-can-trump-do-through-executive-orders-2025-01-14/>; See also Abigail A. Graber, *supra* note 12.

<sup>34</sup> See e.g. *Potential Health Policy Administrative Actions in the Second Trump Administration*, KFF.ORG (Dec. 16, 2024), <https://www.kff.org/potential-health-policy-administrative-actions-in-the-second-trump-administration/>.

<sup>35</sup> See Emma Davis, *Death Threats, Legal Risk and Backlogs Weigh on Clinicians Treating Trans Minors*, NBC NEWS (Aug. 28, 2024), <https://www.nbcnews.com/nbc-out/out-news/trans-minors-treatment-clinicians-laws-bans-rcna164515>.

<sup>36</sup> See e.g. Protect Children’s Innocence Act, H.R. 1399, 118th Congress (2023-2024) (Greene); S.237, 118th Cong. (2023) (Vance).

119th Congress is likely to consider a broader federal ban on gender-affirming care in 2025.<sup>37</sup>

## IMPACT ON TRANSGENDER PEOPLE

Approximately 1.6 million individuals, or 0.6% of the U.S. population aged 13 and older, identify as transgender.<sup>38</sup> An estimated 300,100 youth between the ages of 13 and 17 identify as transgender.<sup>39</sup> While it is difficult to estimate the total number of transgender minors who receive a form of gender-affirming care, available data suggest that the number is low. For example:

- A study conducted by Reuters and Komodo Health Inc. using health insurance claims for about 330 million U.S. patients from 2017 through 2021, including both private plans and public plans like Medicaid, found that of those aged 6 to 17 with a prior gender dysphoria diagnosis, 14,726 patients began gender-affirming hormone therapy and 4,780 patients had started puberty-blocking medications during that time.<sup>40</sup>
- A separate analysis published in 2025 using private insurance claims concluded that receipt of gender-affirming hormone therapy and puberty-blocking medications among transgender youth aged 8 to 17 was rare.<sup>41</sup>
- Another study using medical claims data from nearly 23,000,000 insured minors found that gender-affirming surgeries among transgender and “gender-diverse” minors were rare.<sup>42</sup>
- In the 2015 U.S. Transgender Survey, 1% of all adult respondents had received puberty-blocking medications (typically used between the ages of 9 and 16).<sup>43</sup>

The executive order most directly impacts transgender minors in states that don’t already ban the care, transgender dependents of military service members under 19, and youth under 19 enrolled in Medicaid, Medicare, and other health assistance programs subject to federal funding restrictions. Below, we provide more information about these populations.

<sup>37</sup> See e.g. Anthony Andragna, *Trans Rights to be Marquee Fight for House Republicans*, POLITICO (Jan. 2, 2025), <https://www.politico.com/news/2025/01/02/trans-rights-marquee-fight-house-republicans-00196013>; Orion Rummmler, *The 19th Explains: Can Trans Rights Survive in a Republican-Controlled Congress?* THE 19TH (Jan. 8, 2025), <https://19thnews.org/2025/01/trump-congress-transgender-bills/>.

<sup>38</sup> JODY L. HERMAN, ANDREW R. FLORES & KATHRYN K. O’NEILL, WILLIAMS INST., HOW MANY ADULTS AND YOUTH IDENTIFY AS TRANSGENDER IN THE UNITED STATES? (June 2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf>.

<sup>39</sup> *Id.*

<sup>40</sup> Robin Respaut and Chad Terhune, *Putting Numbers On the Rise of Children Seeking Gender Care*, REUTERS (Oct. 6, 2022), <https://www.reuters.com/investigates/special-report/usa-transyouth-data/>.

<sup>41</sup> Landon D. Hughes, Brittany M. Charlton, and Isa Berzansky, *Gender-Affirming Medications Among Transgender Adolescents in the U.S. (Research Letter)*, 2018-2022, JAMA PEDIATR. E1 (Jan. 6, 2025).

<sup>42</sup> See Dannie Dai, Brittany M. Charlton, and Elizabeth R. Boskey, *supra* note 21.

<sup>43</sup> S. E. JAMES ET AL., NAT’L CTR. FOR TRANSGENDER EQUALITY, THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY 99-101 (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>. Notably, the full results of the 2022 U.S. Transgender Survey are not yet available at the time of publication but could shed further light on utilization of gender-affirming treatments.



- **Transgender Minors.** As noted above, there are approximately 300,100 transgender youth aged 13 to 17 living in the U.S.<sup>44</sup> Currently, over 180,000 of those youth live in states where access to gender-affirming care is permitted,<sup>45</sup> most of whom (149,100) are in states with “shield” laws that protect access to gender-affirming care in various ways,<sup>46</sup> and an additional 8,000 live in states where surgery is banned for minors but other gender-affirming treatments remain available.<sup>47</sup> Transgender minors in these states are likely to be the most directly affected by a federal ban on gender-affirming care.
  - An additional 110,300 transgender youth live in one of 24 states with an existing ban on gender-affirming hormone therapy and surgeries.<sup>48</sup> Many transgender youth living in these states are currently prohibited from accessing these forms of gender-affirming care. However, in several states, there are court challenges to the bans, as described below.
  - Furthermore, the executive order limits access to care for transgender people up to and including youth aged 18. Most state-level bans restrict care for minors aged 17 and younger and do not impact access to care for adults.<sup>49</sup> The order will likely impact access to care for some 18-year-old transgender people who are currently able to access care even in states with bans.

<sup>44</sup> See JODY L. HERMAN, ANDREW R. FLORES & KATHRYN K. O’NEILL, HOW MANY ADULTS AND YOUTH IDENTIFY AS TRANSGENDER IN THE UNITED STATES? *supra* note 38. Notably, this executive order could also impact intersex youth, who are a population that may sometimes seek gender-affirming care, and in other cases, undergo treatment non-consensually. See e.g. Kiara Alfonseca & Mary Kekatos, *Amid Transgender Care Bans, Exceptions Made for Surgery on Intersex Children*, ABC News (July 18, 2023), <https://abcnews.go.com/Health/intersex-surgeries-ignite-controversy-bans-gender-affirming-care/story?id=100452871>. Intersex refers to people whose sex characteristics do not fall into the typical binary categories of male and female. See interACT, *What Is Intersex?* INTERACTADVOCATES.ORG (last updated Jan. 26, 2021), <https://interactadvocates.org/faq/>; see also Human Rights Campaign, *Understanding the Intersex Community*, HRC.ORG (last viewed Jan. 17, 2025), <https://www.hrc.org/resources/understanding-the-intersex-community>. Although data are limited and further research is needed to better understand the size of the intersex population in the U.S., the best estimate to date is that intersex people (of all ages) comprise approximately 1.7% of the population. Melanie Blackless, Anthony Charuvastra, Amanda Derryk, Anne Fausto-Sterling, Karl Lauzanne & Ellen Lee, *How Sexually Dimorphic Are We? Review and Synthesis*, 12 AM. J. OF HUM. BIOLOGY 151-66 (2000).

<sup>45</sup> ELANA REDFIELD, KERITH J. CONRON, AND CHRISTY MALLORY, WILLIAMS INST., THE IMPACT OF 2024 ANTI-TRANSGENDER LEGISLATION ON YOUTH (April 2024), <https://williamsinstitute.law.ucla.edu/publications/2024-anti-trans-legislation/>. Subsequent to the publication of this report, two states added bans on one or more forms of gender-affirming care: New Hampshire (700 youth aged 13-17) and South Carolina (3,700 youth aged 13-17). See H.B. 619, 2023 Gen. Ct., Reg Sess. (N.H. 2023) (enacted); S.C. CODE ANN. §§ 44-42-310 *et seq.* (2024). See also JODY L. HERMAN, ANDREW R. FLORES & KATHRYN K. O’NEILL, HOW MANY ADULTS AND YOUTH IDENTIFY AS TRANSGENDER IN THE UNITED STATES? *supra* note 38.

<sup>46</sup> See Brief of *Amici Curiae* of Williams Institute Scholars in Support of Petitioner and Respondents in Support of Petitioner, U.S. v. Skrmetti, No. 23-477 (U.S. Sept. 3, 2024), at 17-22; See also *Shield Laws for Reproductive and Gender-Affirming Health Care: A State Law Guide*, UCLA LAW CTR. FOR REPRODUCTIVE HEALTH, LAW & POLICY, <https://law.ucla.edu/academics/centers/center-reproductive-health-law-and-policy/shield-laws-reproductive-and-gender-affirming-health-care-state-law-guide> (last visited Jan. 16, 2025).

<sup>47</sup> Bans in Arizona and New Hampshire extend only to surgical treatments for minors, and Arizona additionally protects access to other care by executive order. ARIZ. REV. STAT. § 32-3230 (LexisNexis 2024); See Ariz. Exec. Order No. 2023-12, Ensuring Access to Medically Necessary Gender-Affirming Healthcare, June 27, 2023, <https://azgovernor.gov/office-arizona-governor/executive-order/2023-12>; H.B. 619, 2023 Gen. Ct., Reg Sess. (N.H. 2023) (enacted).

<sup>48</sup> See Brief of *Amici Curiae* of Williams Institute Scholars, *supra* note 46.

<sup>49</sup> See ELANA REDFIELD, KERITH J. CONRON & CHRISTY MALLORY, WILLIAMS INST., THE IMPACT OF 2024 ANTI-TRANSGENDER LEGISLATION ON YOUTH (2024), *supra* note 45. Two states, Alabama and Nebraska, already ban gender-affirming care for youth aged 18. See REDFIELD ET AL., WILLIAMS INST., PROHIBITING GENDER-AFFIRMING MEDICAL CARE FOR YOUTH 11 (March 2023), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Youth-Health-Bans-Mar-2023.pdf>.

- **Transgender Dependents of Military Service Members.** Congress has already enacted legislation that prohibits funding under TRICARE for gender-affirming treatments for the minor dependents of service members.<sup>50</sup> The President's executive order extends this prohibition to youth aged 18 and directs the Department of Defense to issue regulations and subregulatory actions regarding the exclusion.<sup>51</sup>
- **Medicaid.** Medicaid programs are operated by states in partnership with the federal government, providing health care to low-income individuals.<sup>52</sup> Limitations in data sources make it difficult to know how many transgender youth under age 19 are enrolled in Medicaid. However, we estimate that approximately 276,000 transgender adults are enrolled in Medicaid nationally.<sup>53</sup> Existing coverage for gender-affirming care under these programs varies from state to state, with some states already excluding coverage. Additionally, several jurisdictions have court decisions that may currently prevent a state from denying gender-affirming care.<sup>54</sup> A federal ban on coverage for gender-affirming care that applies to these plans could result in a loss of care for transgender youth who rely on these benefit plans. The impact would be most directly experienced by youth who currently have access to care under state Medicaid policy.
- **Medicare.** Although the executive order only addresses care for transgender youth 19 and under, it references the Medicare program.<sup>55</sup> Medicare is a federal health care program predominantly for people 65 and older but does apply to some individuals with disabilities, which could include minors under 19.<sup>56</sup> Due to limitations in data, we cannot estimate with certainty how many Medicare beneficiaries may be under age 19.

## CURRENT LEGAL LANDSCAPE

Access to gender-affirming care is subject to a complicated patchwork of state bans, state protections, and other federal and state laws. As described above, this includes categorical prohibitions for youth and restrictions on funding and insurance coverage, including for dependents of military service members. This also includes restrictions on gender-affirming care in some state government settings, such as prisons<sup>57</sup> and in the military.<sup>58</sup> No

<sup>50</sup> H.R. 2670, *supra* note 29.

<sup>51</sup> Exec. Order, Protecting Children from Chemical and Surgical Mutilation, *supra* note 1, § 6.

<sup>52</sup> See Robin Rudowicz, et al., *10 Things to Know About Medicaid*, KFF.ORG (June 30, 2023), <https://www.kff.org/medicaid/issue-brief/10-things-to-know-about-medicaid/>.

<sup>53</sup> CHRISTY MALLORY & WILL TENTINDO, WILLIAMS INST., MEDICAID COVERAGE FOR GENDER-AFFIRMING CARE (Dec. 2022), <https://williamsinstitute.law.ucla.edu/publications/medicaid-trans-health-care/>.

<sup>54</sup> See e.g. Kadel v. Folwell/Anderson v. Crouch, 100 F.4th 122 (4th Cir. 2024) (holding, *inter alia*, that West Virginia's Medicaid plan's exclusion of gender-affirming procedures violates the Equal Protection Clause); See also Flack v. Wis. Dep't. of Health Servs., 328 F. Supp. 3d 931 (W.D. Wis. 2018) (Wisconsin); Cruz v. Zucker, 116 F. Supp. 3d 334, 346 (S.D.N.Y. 2015) (New York).

<sup>55</sup> Exec. Order, Protecting Children from Chemical and Surgical Mutilation, *supra* note 1, § 5(a)(i).

<sup>56</sup> Medicare, SOC. SEC. ADMIN. (2025), <https://www.ssa.gov/pubs/EN-05-10043.pdf> (last visited Jan. 16, 2025).

<sup>57</sup> HEALTH SERVICES BULLETIN 15.05.23: MENTAL HEALTH TREATMENT OF INMATES WITH GENDER DYSPHORIA, FLA. DEP'T. OF CORRECTIONS (Sept. 30, 2024), <https://www.documentcloud.org/documents/25279694-hsb-150523-mental-health-treatment-for-gender-dysphoria1/>; See also Christine Sexton, Trump-Appointed Judge Allows Transgender-Rights Restrictions in Florida Prisons to Take Effect, FLA. PHOENIX (Dec. 30, 2024), <https://floridaphoenix.com/2024/12/31/trump-appointed-judge-allows-transgender-rights-restrictions-in-florida-prisons-to-take-effect/>; See also Donald J. Trump, Exec. Order § 4(c) (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>.

<sup>58</sup> Pride in Serving Transgender & Gender Diverse Veterans, U.S. DEP'T. OF VET. AFFAIRS, [https://www.patientcare.va.gov/LGBT/docs/2024/Gender-Affirming\\_Care\\_at\\_VA-Providers\\_4-24.pdf](https://www.patientcare.va.gov/LGBT/docs/2024/Gender-Affirming_Care_at_VA-Providers_4-24.pdf) (last visited Jan. 16, 2025) (noting that surgical procedures are prohibited); See also Exec. Order, Prioritizing Military Excellence and Readiness, The White House, Jan. 28, 2025, <https://www.whitehouse.gov/presidential-actions/2025/01/>

state has banned access to gender-affirming care for adults, but one state, Florida, has imposed restrictions on the ways that adults can access gender-affirming care.<sup>59</sup> At the same time, many states offer state-level protections for providers and recipients of care.<sup>60</sup>

Restrictions and bans on gender-affirming care have been extensively litigated.<sup>61</sup> In December 2024, the Supreme Court heard oral arguments in a case<sup>62</sup> challenging Tennessee's ban on gender-affirming care for minors,<sup>63</sup> in which we submitted an amicus brief outlining some of the data provided above.<sup>64</sup> The case deals with the question of whether Tennessee's law is a form of sex discrimination or transgender discrimination that violates the Equal Protection Clause of the U.S. Constitution.<sup>65</sup> A decision in the case is expected in 2025 and has the potential to dispositively impact the landscape of gender-affirming care—in particular, it has the potential to uphold or presumptively invalidate state bans on gender-affirming care, and depending on the scope of the decision could also have impact on the viability of the proposed federal ban.

## CONCLUSION

President Trump has directed federal agencies to prohibit access to gender-affirming care for transgender youth and take additional steps to discourage access to the care. Some aspects of this executive order will have an immediate impact, such as the rescission of President Biden's support for gender-affirming care and possible early enforcement attempts from the Department of Justice. However, other aspects of this order will likely take time to implement,<sup>66</sup> and the president will need to go through formal channels, such as the formal rulemaking process.<sup>67</sup> A long-term ban on gender-affirming care, if it requires a statutory change, would have to go through Congress. Furthermore, the extensive landscape of state laws and court precedent surrounding gender-affirming care means that most of the actions outlined in the executive order will likely have to contend with immediate and potentially long-lasting litigation.

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[prioritizing-military-excellence-and-readiness/](#) (executive order directing that transgender people should be prohibited from serving in the military, and prohibiting coverage for gender-affirming care in the military).

<sup>59</sup> FLA. STAT. §§ 456.52 (LexisNexis 2024) (S.B. 254); See also Thalia Beaty, Brendan Farrington, & Hannah Schoenbaum, *Transgender Adults in Florida are Blindsided That A New Law Also Limits Their Access to Health Care*, ASSOC. PRESS. (JUNE 4, 2023), <https://apnews.com/article/florida-transgender-health-care-adults-e7ae55eec634923e6593a4c0685969b2>.

<sup>60</sup> See *Shield Laws for Reproductive and Gender-Affirming Health Care: A State Law Guide*; *supra* note 46.

<sup>61</sup> See e.g. ELANA REDFIELD, KERITH J. CONRON, AND CHRISTY MALLORY, THE IMPACT OF 2024 ANTI-TRANSGENDER LEGISLATION ON YOUTH, *supra* note 45 at 7-8.

<sup>62</sup> U.S. v. Skrmetti, No. 23-477 (U.S. oral arguments Dec. 4, 2024).

<sup>63</sup> TENN. CODE ANN. §§ 68-33-103 *et seq.* (2024).

<sup>64</sup> See Brief of *Amici Curiae* of Williams Institute Scholars in Support of Petitioner and Respondents in Support of Petitioner, *supra* note 46.

<sup>65</sup> See ELANA REDFIELD, WILLIAMS INST., UNDERSTANDING U.S. V. SKRMETTI (Dec. 2024), <https://williamsinstitute.law.ucla.edu/publications/understanding-skrmetti/>.

<sup>66</sup> Notably, President Trump's military ban was announced via tweet but took years to implement through the Department of Defense. See *The Trump Administration's Transgender Military Ban*, AMERICANOVERSIGHT.ORG (Jan. 25, 2021), <https://americanoversight.org/investigation/trump-administrations-transgender-military-ban/>.

<sup>67</sup> See Brendan Pierson, *What Are Executive Orders and How Can Trump Use Them*, *supra*, note 33.