

MAINE STATE LEGISLATURE

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Date 6/20/23

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LD 535
(Filing No H-597)

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
131ST LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT "B" to HP 340, LD 535, "An Act to Increase Access to Necessary Medical Care for Certain Minors"

Amend the bill by striking out the title and substituting the following
'An Act Regarding Consent for Gender-affirming Hormone Therapy for Certain Minors'

Amend the bill by striking out everything after the enacting clause and inserting the following

'Sec. 1. 22 MRSA §1508 is enacted to read.

§1508. Consent for gender-affirming hormone therapy

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings

A "Gender-affirming hormone therapy" means nonsurgical, medically necessary health care that respects the gender identity of the patient, as experienced and defined by the patient, that includes, but is not limited to, the following health care

(1) Interventions to suppress the development of endogenous secondary sex characteristics,

(2) Interventions to align the patient's appearance or physical body with the patient's gender identity, or

(3) Interventions to alleviate symptoms of clinically significant distress resulting from gender dysphoria

B "Gender dysphoria" means a clinical diagnosis of gender dysphoria as defined either in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or in the Standards of Care for the Health of Transgender and Gender Diverse People, Version 8 or subsequent version, published by the World Professional Association for Transgender Health

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1 C "Health care professional" means a person qualified by training and experience to
2 provide and monitor the provision of gender-affirming hormone therapy who is
3 authorized by law to prescribe medication and who is

- 4 (1) Licensed by the Board of Licensure in Medicine under Title 32, chapter 48,
- 5 (2) Licensed by the Board of Osteopathic Licensure under Title 32, chapter 36, or
- 6 (3) Licensed by the State Board of Nursing as an advanced practice registered nurse
7 under Title 32, chapter 31

8 2. Authority of minor to consent. A health care professional may provide gender-
9 affirming hormone therapy and follow-up care to a minor without obtaining the consent of
10 the parent or guardian of the minor only if

- 11 A The minor is emancipated,
- 12 B The minor has been diagnosed with gender dysphoria by a health care professional,
- 13 C In the judgment of the health care professional, the minor is experiencing harm
14 from or is expected to experience harm from not receiving gender-affirming hormone
15 therapy, and
- 16 D The minor provides informed written consent to the receipt of gender-affirming
17 hormone therapy in accordance with the requirements of subsection 3, the health care
18 professional makes the written consent that is set forth in a writing containing the
19 information and statements required by subsection 3, paragraph B and that is signed by
20 the minor a part of the minor's health record, and the minor, under all the surrounding
21 circumstances, is mentally and physically competent to give consent

22 3. Informed consent. A minor who meets the requirements of subsection 2,
23 paragraphs A to C may provide informed written consent to gender-affirming hormone
24 therapy and follow-up care only in accordance with the requirements of this subsection

- 25 A A health care professional shall, in a manner that the health care professional
26 believes is not misleading and will be understood by the minor
 - 27 (1) Explain that the information being given to the minor is not intended to coerce,
28 persuade or induce the minor to consent to gender-affirming hormone therapy,
 - 29 (2) Explain that the minor may withdraw the decision to commence or to continue
30 to receive gender-affirming hormone therapy at any time either before the therapy
31 begins or during the course of the therapy,
 - 32 (3) Clearly and fully explore with the minor the alternative choices available for
33 managing and treating gender dysphoria,
 - 34 (4) Explain the physiological effects, benefits and possible consequences of
35 gender-affirming hormone therapy and follow-up care, including the physiological
36 effects, benefits and possible consequences of discontinuing the therapy, and
 - 37 (5) Provide an adequate opportunity for the minor to ask any questions concerning
38 gender dysphoria, gender-affirming hormone therapy and follow-up care and
39 provide the information the minor seeks or, if the health care professional cannot
40 provide the information, explain where the minor can obtain the information

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B After providing the information and counseling required by paragraph A, the health care professional shall have the minor sign and date a form stating

(1) The business address and telephone number of the health care professional who provided the information and counseling required by paragraph A.

(2) The minor has received information on gender-affirming hormone therapy and follow-up care, including the benefits and possible consequences of and alternatives to gender-affirming hormone therapy.

(3) The minor has received an explanation that the minor may withdraw consent to gender-affirming hormone therapy at any time, including after therapy begins.

(4) The alternatives for managing gender dysphoria have been clearly and fully explored with the minor, and

(5) The minor has been given an adequate opportunity to ask questions and receive answers about gender dysphoria, gender-affirming hormone therapy and follow-up care

C The health care professional who provided the information and counseling required by paragraph A shall also sign and date the form signed by the minor under paragraph B. The health care professional shall retain a copy of the form in that health care professional's files and shall give the form to the minor. If the health care professional who provided the information and counseling required by paragraph A is not the health care professional who will provide gender-affirming hormone therapy to the minor, at the minor's request the health care professional shall transmit the form to the health care professional who will provide gender-affirming hormone therapy to the minor.

4. Rebuttable presumption of validity. A written consent of a minor who meets the requirements of subsection 2 that is set forth in a writing containing the information and statements required by subsection 3, paragraph B and that is signed by the minor is presumed to be a valid, informed consent to treatment for gender-affirming hormone therapy and bars an action by a parent or guardian of the minor on the grounds of battery, malpractice or any other claim for providing gender-affirming hormone therapy without consent from a parent or guardian. The presumption of validity established in this subsection may be rebutted only by evidence that the minor's consent was obtained through fraud, deception or misrepresentation of material fact.

5. Disallowance of recovery. Recovery is not allowed against a health care professional upon the grounds that gender-affirming hormone therapy of a minor who meets the requirements of subsection 2 was rendered without the informed consent of the minor when

A The health care professional, in obtaining the minor's consent, complied with the terms of this section and the standards of care among members of the same health care profession with similar training and experience situated in the same or similar communities, or

B The health care professional received and acted in good faith on the informed written consent to gender-affirming hormone therapy given by the minor to another health care professional that contains the information and statements required by subsection 3, paragraph B.

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