

THE FLORIDA SENATE
2023 SUMMARY OF LEGISLATION PASSED
Committee on Health Policy

CS/SB 254 — Treatments for Sex Reassignment

by Health Policy Committee and Senators Yarborough, Perry, and Broxson

The bill (Chapter 2023-90, L.O.F.) creates several requirements, authorizations, prohibitions, and other provisions relating to medical treatments for the purpose of sex reassignment.

Definitions

The bill defines “sex” to mean the classification of a person as either male or female based on the organization of the human body of such person for a specific reproductive role, as indicated by the person’s sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present at birth.

The bill defines “sex-reassignment prescriptions or procedures” to mean:

- The prescription or administration of puberty blockers for the purpose of attempting 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;
- The prescription or administration of hormones or hormone antagonists to affirm a person’s perception of his or her sex if that perception is inconsistent with the person’s sex; or
- Any medical procedure, including a surgical procedure, to affirm a person’s perception of his or her sex if that perception is inconsistent with the person’s sex.

The bill provides that the definition of “sex-reassignment prescriptions or procedures” does not include:

- Treatment provided by a physician who, in his or her good-faith clinical judgment, performs procedures upon or provides therapies to a minor born with a medically verifiable genetic disorder of sexual development;
- Prescriptions or procedures to treat an infection, an injury, a disease, or a disorder that has been caused or exacerbated by the performance of any sex-reassignment prescription or procedure, regardless of whether such prescription or procedure was performed in accordance with state or federal law; or
- Prescriptions or procedures provided to a patient for the treatment of a physical disorder, physical injury, or physical illness that would, as certified by a licensed allopathic or osteopathic physician, place the individual in imminent danger of death or impairment of a major bodily function without the prescription or procedure.

Restrictions on Health Care Practitioners

The bill provides that sex-reassignment prescriptions or procedures may not be prescribed, administered, or performed except by a licensed allopathic or osteopathic physician or a physician practicing medicine or osteopathic medicine in the employment of the federal government.

Under the bill, sex-reassignment prescriptions and procedures are prohibited for patients younger than 18 years of age, except that:

- The Board of Medicine and the Board of Osteopathic Medicine (boards) are directed to, within 60 days after the bill's effective date, adopt emergency rules pertaining to standards of practice under which a patient younger than 18 years of age may continue to be treated by a physician with a prescription for sex-reassignment if such treatment was commenced before, and is still active on, the bill's effective date.
- In developing such rules, the boards are directed to consider requirements for physicians to obtain informed consent from such patient's parent or legal guardian under certain parameters and to consider the provision of professional counseling services for such patient by a board-certified psychiatrist or a licensed psychologist in conjunction with such prescription treatment.
- A patient younger than 18 years of age may continue to be treated by a physician with prescriptions for sex-reassignment according to the emergency rules, or nonemergency rules adopted to replace the emergency rules, if such treatment was commenced before, and is still active on, the bill's effective date.

The bill requires that if sex-reassignment treatments are prescribed for or administered or performed on patients 18 years of age or older, consent must be voluntary, informed, and in writing on forms adopted in rule by the boards and that consent is voluntary and informed only if the physician who is to prescribe or administer the pharmaceutical product or perform the procedure has, at a minimum, while physically present in the same room:

- Informed the patient of the nature and risks of the treatment in order for the patient to make a prudent decision;
- Provided the informed consent form to the patient; and
- Received the patient's written acknowledgment, before the prescription or procedure is prescribed, administered, or performed, that the information required to be provided has been provided.

The bill provides that the requirements for consent do not apply to renewals of prescriptions if a physician and his or her patient have met the requirements for consent for the initial prescription or renewal. However, separate consent is required for any new prescription for a pharmaceutical product not previously prescribed to the patient.

The bill provides that a health care practitioner's violation of the bill's provisions constitutes grounds for disciplinary action and that:

- Any health care practitioner who willfully or actively participates in a violation of the bill's provisions relating to treating a minor commits a felony of the third degree; and
- Any health care practitioner who violates the bill's provisions relating to treating an adult commits a misdemeanor of the first degree.

The bill requires the boards to adopt emergency rules to implement the provisions described above and that any emergency rules adopted under the bill will remain in effect until replaced by rules adopted under nonemergency rulemaking procedures.

The bill amends s. 456.074, F.S., relating to immediate suspension of a health care practitioner's license to provide that the Department of Health must issue an emergency order suspending a practitioner's license if the practitioner is arrested for committing, or attempting, soliciting, or conspiring to commit, a violation of the bill's prohibitions against providing sex-reassignment treatments to a minor.

Prohibition Against Expenditure of State Funds

The bill creates s. 286.31, F.S., to provide that a governmental entity as defined in the bill, a public postsecondary educational institution as described in s. 1000.04, F.S., the state group health insurance program, a managing entity as defined in s. 394.9082, F.S., or a managed care plan providing services under Statewide Medicaid Managed Care may not expend state funds as described in s. 215.31, F.S., for sex-reassignment prescriptions or procedures.

Court Jurisdiction for Child Custody

The bill amends Florida's Uniform Child Custody Jurisdiction and Enforcement Act to provide that:

- In addition to other conditions in current law that result in a court in Florida having temporary emergency jurisdiction over child custody if a child is present in this state, a court in Florida has such jurisdiction if it is necessary in an emergency to protect a child who has been subjected to or is threatened with being subjected to sex reassignment treatments; and
- Regarding the current-law authorization for a petitioner to file an application with a court for a warrant to take physical custody of a child if the child is likely to imminently suffer serious physical harm or removal from this state, the term "serious physical harm" includes, but is not limited to, being subjected to sex-reassignment treatments.

Civil Liability

The bill authorizes a person to bring a medical negligence action under ch. 766, F.S., to recover damages for personal injuries or death as a result of a prohibited sex-reassignment prescription or procedure provided to a person younger than 18 years of age. The action may be commenced within 20 years after the cessation or completion of the sex-reassignment treatment. If the action is successful, any award for punitive damages is exempt from the existing statutory limits on punitive damages. The bill does not create a cause of action for a person to bring a lawsuit based on lawful conduct occurring before the bill's effective date or lawful conduct that began before the bill's effective date and lawfully continued after that date.

Other Provisions

The bill provides that:

- If any of its provisions or their application to any person or circumstance are held invalid, the invalidity does not affect other provisions or applications of the bill which can be given effect without the invalid provision or application, and to this end the provisions of the bill are severable.

These provisions were approved by the Governor and take effect upon becoming law.

Vote: Senate 26-13; House 83-28