

118TH CONGRESS
1ST SESSION

S. 1595

To prohibit taxpayer-funded gender transition procedures, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 15, 2023

Mr. MARSHALL (for himself, Mrs. BLACKBURN, Mr. BRAUN, Mr. CRAMER, Mr. DAINES, Mrs. HYDE-SMITH, Mr. LEE, Mr. MULLIN, Mr. RISCH, Mr. RUBIO, Mr. WICKER, and Mr. HAWLEY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To prohibit taxpayer-funded gender transition procedures,
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “End Taxpayer Funding of Gender Experimentation Act
6 of 2023”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PROHIBITING FEDERALLY FUNDED GENDER
TRANSITION PROCEDURES

Sec. 101. Prohibiting taxpayer-funded gender transition procedures.

Sec. 102. Amendment to table of chapters.

TITLE II—APPLICATION UNDER THE AFFORDABLE CARE ACT

Sec. 201. Clarifying application of prohibition to premium credits and cost-sharing reductions under ACA.

1 **TITLE I—PROHIBITING FEDER-**
2 **ALLY FUNDED GENDER TRAN-**
3 **SITION PROCEDURES**

4 **SEC. 101. PROHIBITING TAXPAYER-FUNDED GENDER TRAN-**
5 **SITION PROCEDURES.**

6 Title 1, United States Code, is amended by adding
7 at the end the following new chapter:

8 **“CHAPTER 4—PROHIBITING TAXPAYER-**
9 **FUNDED GENDER TRANSITION PROCE-**
10 **DURES**

“Sec.

“301. Prohibition on funding for gender transition procedures.

“302. Prohibition on funding for health benefits plans that cover gender transition procedures.

“303. Limitation on Federal facilities and employees.

“304. Construction relating to separate coverage.

“305. Construction relating to the use of non-Federal funds for health coverage.

“306. Construction relating to complications arising from gender transition procedures.

“307. Definitions.

11 **“§ 301. Prohibition on funding for gender transition**
12 **procedures**

13 “No funds authorized or appropriated by Federal
14 law, and none of the funds in any trust fund to which
15 funds are authorized or appropriated by Federal law, shall
16 be expended for any gender transition procedures.

1 **“§ 302. Prohibition on funding for health benefits**
2 **plans that cover gender transition proce-**
3 **dures**

4 “No funds authorized or appropriated by Federal
5 law, and none of the funds in any trust fund to which
6 funds are authorized or appropriated by Federal law, shall
7 be expended for health benefits coverage that includes cov-
8 erage of gender transition procedures.

9 **“§ 303. Limitation on Federal facilities and employees**

10 “No health care service furnished—

11 “(1) by or in a health care facility owned or op-
12 erated by the Federal Government; or

13 “(2) by any physician or other individual em-
14 ployed by the Federal Government to provide health
15 care services within the scope of the physician’s or
16 individual’s employment,

17 may include gender transition procedures.

18 **“§ 304. Construction relating to separate coverage**

19 “Nothing in this chapter shall be construed as pro-
20 hibiting any individual, entity, or State or locality from
21 purchasing separate coverage for gender transition proce-
22 dures or health benefits coverage that includes gender
23 transition procedures so long as such coverage is paid for
24 entirely using only funds not authorized or appropriated
25 by Federal law and such coverage shall not be purchased
26 using matching funds required for a federally subsidized

1 program, including a State’s or locality’s contribution of
 2 Medicaid matching funds.

3 **“§ 305. Construction relating to the use of non-Fed-**
 4 **eral funds for health coverage**

5 “Nothing in this chapter shall be construed as re-
 6 stricting the ability of any non-Federal health benefits cov-
 7 erage provider from offering coverage for gender transi-
 8 tion procedures, or the ability of a State or locality to con-
 9 tract separately with such a provider for such coverage,
 10 so long as only funds not authorized or appropriated by
 11 Federal law are used and such coverage shall not be pur-
 12 chased using matching funds required for a federally sub-
 13 sidized program, including a State’s or locality’s contribu-
 14 tion of Medicaid matching funds.

15 **“§ 306. Construction relating to complications arising**
 16 **from gender transition procedures**

17 “Nothing in this chapter shall be construed to apply
 18 to the treatment of any infection, injury, disease, or dis-
 19 order that has been caused by or exacerbated by the per-
 20 formance of a gender transition procedure.

21 **“§ 307. Definitions**

22 “For purposes of this chapter:

23 “(1) BIOLOGICAL SEX.—The term ‘biological
 24 sex’ means the biological indication of male or fe-
 25 male in the context of reproductive potential or ca-

1 pacity, such as sex chromosomes, naturally occurring
2 sex hormones, gonads, and non-ambiguous internal
3 and external genitalia present at birth, without re-
4 gard to an individual’s psychological, chosen, or sub-
5 jective experience of gender.

6 “(2) CROSS-SEX HORMONES.—The term ‘cross-
7 sex hormones’ means—

8 “(A) testosterone or other androgens given
9 to biological females at doses that are pro-
10 foundly larger or more potent than would nor-
11 mally occur naturally in healthy biological fe-
12 males; and

13 “(B) estrogen given to biological males at
14 doses that are profoundly larger or more potent
15 than would normally occur naturally in healthy
16 biological males.

17 “(3) GENDER.—The term ‘gender’ means the
18 psychological, behavioral, social, and cultural aspects
19 of being male or female.

20 “(4) GENDER TRANSITION.—The term ‘gender
21 transition’ means the process in which an individual
22 goes from identifying with and living as a gender
23 that corresponds to his or her biological sex to iden-
24 tifying with and living as a gender different from his

1 or her biological sex, and may involve social, legal,
2 or physical changes.

3 “(5) GENDER TRANSITION PROCEDURE.—

4 “(A) IN GENERAL.—The term ‘gender
5 transition procedure’ means any medical or sur-
6 gical service that seeks—

7 “(i) to alter or remove physical or an-
8 atomical characteristics or features that
9 are typical for the individual’s biological
10 sex; or

11 “(ii) to instill or create physiological
12 or anatomical characteristics that resemble
13 a sex different from the individual’s birth
14 sex.

15 “(B) INCLUSIONS.—For purposes of sub-
16 paragraph (A), the term ‘medical or surgical
17 service’ includes—

18 “(i) physician’s services;

19 “(ii) inpatient and outpatient hospital
20 services;

21 “(iii) prescribed drugs relating to gen-
22 der transition;

23 “(iv) a medical service that provides—

24 “(I) puberty-blocking drugs;

25 “(II) cross-sex hormones; or

1 “(III) other mechanisms to pro-
2 mote the development of feminizing or
3 masculinizing features (in the opposite
4 sex); and

5 “(v) gender transition surgery.

6 “(C) EXCLUSIONS.—The term ‘gender
7 transition procedure’ does not include—

8 “(i) services to individuals born with a
9 medically verifiable disorder of sex develop-
10 ment, including an individual with external
11 biological sex characteristics that are
12 irresolvably ambiguous, such as an indi-
13 vidual born with 46 XX chromosomes with
14 virilization, an individual born with 46 XY
15 chromosomes with undervirilization, or an
16 individual born having both ovarian and
17 testicular tissue;

18 “(ii) services provided when a physi-
19 cian has otherwise diagnosed a disorder of
20 sexual development in which the physician
21 has determined through genetic or bio-
22 chemical testing that the individual does
23 not have normal sex chromosome struc-
24 ture, sex steroid hormone production, or

1 sex steroid hormone action for a biological
2 male or biological female; or

3 “(iii) the treatment of any infection,
4 injury, disease, or disorder that has been
5 caused by or exacerbated by the perform-
6 ance of gender transition procedures,
7 whether or not the gender transition proce-
8 dure was performed in accordance with
9 State and Federal law or whether or not
10 funding for the gender transition proce-
11 dure is permissible under this chapter.

12 “(6) GENDER TRANSITION SURGERY.—

13 “(A) IN GENERAL.—The term ‘gender
14 transition surgery’ means any medical or sur-
15 gical service that seeks to surgically alter or re-
16 move healthy physical or anatomical character-
17 istics or features that are typical for the indi-
18 vidual’s biological sex in order to instill or cre-
19 ate physiological or anatomical characteristics
20 that resemble a sex different from the individ-
21 ual’s birth sex.

22 “(B) INCLUSIONS.—The term ‘gender
23 transition surgery’ includes genital gender tran-
24 sition surgery and non-genital gender transition
25 surgery.

1 “(C) EXCLUSIONS.—The term ‘gender
2 transition surgery’ does not include any proce-
3 dure undertaken because the individual suffers
4 from a physical disorder, physical injury, or
5 physical illness that would, as certified by a
6 physician, place the individual in imminent dan-
7 ger of death or impairment of major bodily
8 function unless the procedure is performed, un-
9 less such procedure is performed for the pur-
10 pose of a gender transition or for the alleviation
11 of psychological or mental distress.

12 “(7) GENITAL GENDER TRANSITION SUR-
13 GERY.—The term ‘genital gender transition surgery’
14 means a surgical procedure performed for the pur-
15 pose of assisting an individual with a gender transi-
16 tion, including—

17 “(A) for biologically male patients, a
18 penectomy, orchiectomy, vaginoplasty,
19 clitoroplasty, and vulvoplasty; and

20 “(B) for biologically female patients, a
21 hysterectomy/ovariectomy, reconstruction of the
22 fixed part of the urethra with or without a
23 metoidioplasty or a phalloplasty, vaginectomy,
24 scrotoplasty, and implantation of erection or
25 testicular prostheses.

1 “(8) NON-GENITAL GENDER TRANSITION SUR-
2 GERY.—The term ‘non-genital gender transition sur-
3 gery’ means a surgical procedure performed for the
4 purpose of assisting an individual with a gender
5 transition, including—

6 “(A) for biologically male patients, aug-
7 mentation mammoplasty, facial feminization
8 surgery, liposuction, lipofilling, voice surgery,
9 thyroid cartilage reduction, gluteal augmenta-
10 tion (implants/lipofilling), hair reconstruction,
11 and various aesthetic procedures; and

12 “(B) for biologically female patients, sub-
13 cutaneous mastectomy, voice surgery,
14 liposuction, lipofilling, pectoral implants, and
15 various aesthetic procedures.

16 “(9) PUBERTY-BLOCKING DRUGS.—The term
17 ‘puberty-blocking drugs’ means—

18 “(A) Gonadotropin-releasing hormone
19 (GnRH) analogues or other synthetic drugs
20 used in biological males to stop luteinizing hor-
21 mone secretion and therefore testosterone secre-
22 tion; and

23 “(B) synthetic drugs used in biological fe-
24 males that stop the production of estrogen and
25 progesterone, when used to delay or suppress

1 (B) OPTION TO PURCHASE OR OFFER SEP-
2 ARATE COVERAGE OR PLAN.—Paragraph (3) of
3 section 36B(c) of such Code is amended by
4 adding at the end the following new subpara-
5 graph:

6 “(C) SEPARATE COVERAGE OR PLAN FOR
7 GENDER TRANSITION PROCEDURES AL-
8 LOWED.—

9 “(i) OPTION TO PURCHASE SEPARATE
10 COVERAGE OR PLAN.—Nothing in subpara-
11 graph (A) shall be construed as prohibiting
12 any individual from purchasing separate
13 coverage for gender transition procedures
14 described in such subparagraph, or a
15 health plan that includes such gender tran-
16 sition procedures, so long as no credit is
17 allowed under this section with respect to
18 the premiums for such coverage or plan.

19 “(ii) OPTION TO OFFER COVERAGE OR
20 PLAN.—Nothing in subparagraph (A) shall
21 restrict any non-Federal health insurance
22 issuer offering a health plan from offering
23 separate coverage for gender transition
24 procedures described in such subpara-
25 graph, or a plan that includes such gender

1 transition procedures, so long as premiums
 2 for such separate coverage or plan are not
 3 paid for with any amount attributable to
 4 the credit allowed under this section (or
 5 the amount of any advance payment of the
 6 credit under section 1412 of the Patient
 7 Protection and Affordable Care Act).”.

8 (2) DISALLOWANCE OF SMALL EMPLOYER
 9 HEALTH INSURANCE EXPENSE CREDIT FOR PLAN
 10 WHICH INCLUDES COVERAGE FOR GENDER TRANSI-
 11 TION PROCEDURES.—Subsection (h) of section 45R
 12 of the Internal Revenue Code of 1986 is amended—

13 (A) by striking “Any term” and inserting
 14 the following:

15 “(1) IN GENERAL.—Any term”; and

16 (B) by adding at the end the following new
 17 paragraph:

18 “(2) EXCLUSION OF HEALTH PLANS INCLUDING
 19 COVERAGE FOR GENDER TRANSITION PROCE-
 20 DURES.—

21 “(A) IN GENERAL.—The term ‘qualified
 22 health plan’ does not include any health plan
 23 that includes coverage for gender transition
 24 procedures (other than any procedure described
 25 in section 306 of title 1, United States Code).

1 “(B) SEPARATE COVERAGE OR PLAN FOR
2 GENDER TRANSITION PROCEDURES AL-
3 LOWED.—

4 “(i) OPTION TO PURCHASE SEPARATE
5 COVERAGE OR PLAN.—Nothing in subpara-
6 graph (A) shall be construed as prohibiting
7 any employer from purchasing for its em-
8 ployees separate coverage for gender tran-
9 sition procedures described in such sub-
10 paragraph, or a health plan that includes
11 such gender transition procedures, so long
12 as no credit is allowed under this section
13 with respect to the employer contributions
14 for such coverage or plan.

15 “(ii) OPTION TO OFFER COVERAGE OR
16 PLAN.—Nothing in subparagraph (A) shall
17 restrict any non-Federal health insurance
18 issuer offering a health plan from offering
19 separate coverage for gender transition
20 procedures described in such subpara-
21 graph, or a plan that includes such gender
22 transition procedures, so long as such sep-
23 arate coverage or plan is not paid for with
24 any employer contribution eligible for the
25 credit allowed under this section.”.

1 (b) APPLICATION TO MULTI-STATE PLANS.—Section
2 1334(a) of Public Law 111–148 (42 U.S.C. 18054(a)) is
3 amended by adding at the end the following new para-
4 graph:

5 “(7) COVERAGE CONSISTENT WITH FEDERAL
6 POLICY REGARDING GENDER TRANSITION PROCE-
7 DURES.—In entering into contracts under this sub-
8 section, the Director shall ensure that no multi-State
9 qualified health plan offered in an Exchange pro-
10 vides health benefits coverage for which the expendi-
11 ture of Federal funds is prohibited under chapter 4
12 of title 1, United States Code.”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 subsection (a) shall apply to taxable years ending after
15 the date that is 1 year after the date of enactment of this
16 Act, but only with respect to plan years beginning after
17 such date, and the amendment made by subsection (b)
18 shall apply to plan years beginning after such date.

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