

# Youth Access to Gender Affirming Care: The Federal and State Policy Landscape

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**Published: Jun 01, 2022**



Numerous states have implemented or considered actions aimed at limiting LGBTQ+ youth access to gender affirming health care. Four states (Alabama, Arkansas, Texas, and Arizona) have recently enacted such restrictions (though the AL, AR, and TX laws all have been temporarily blocked by court rulings) and in 2022, 15 states are considering 25 similar pieces of legislation. At the same time, other states have adopted broad nondiscrimination health protections based on gender identity and sexual orientation. Separately, the Biden administration, which has been working to eliminate barriers and expand access to health care for LGBTQ+ people more generally, has come out against restrictive state policies. This analysis explores the current state and federal policy landscape regarding gender affirming services for youth and the implications of restrictive state laws.

**Table 1: Key Terms**

Gender Identity	Gender identity is one's internal sense of being male, female, some combination, or another gender. Gender identity may or may not align with sex or gender assigned at birth.
Transgender	Somebody who is transgender has a gender identity different from that traditionally associated with sex assigned at birth.
Gender Dysphoria	Gender dysphoria <u>refers to</u> ( <a href="https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria">https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria</a> ) "a concept [and clinical diagnosis] designated in the DSM-5 as clinically significant distress or impairment related to a strong desire to be of another gender, which may include desire to change primary and/or secondary sex characteristics. Not all transgender or gender diverse people experience dysphoria."
Gender Affirming Care	Gender-affirming care is a model of care which <u>includes</u> ( <a href="https://www.euro.who.int/en/health-topics/health-determinants/gender/gender-definitions/whoeurope-brief-transgender-health-in-the-context-of-icd-11">https://www.euro.who.int/en/health-topics/health-determinants/gender/gender-definitions/whoeurope-brief-transgender-health-in-the-context-of-icd-11</a> ) a spectrum of "social, psychological, behavioral or medical (including hormonal treatment or surgery) interventions designed to support and affirm an individual's gender identity."

## What is the status of state policy restrictions aimed at limiting youth access to gender affirming care?

Four states (Alabama, Arkansas, Texas, and Arizona) recently enacted laws or policies restricting youth access to gender affirming care and, in some cases, imposing penalties on adults facilitating access. Alabama, Arkansas, and Texas have been temporarily blocked from enforcing

these laws and policies by court order.

- **Alabama.** In April 2022, the Alabama governor signed a bill (<https://www.billtrack50.com/BillDetail/1446900>) into law that prevents transgender minors from receiving gender affirming care, including puberty blockers, hormone therapy, and surgical intervention. The bill makes it a felony for any person to “engage in or cause” a transgender minor to receive any of these treatments, punishable by up to 10 years in prison or a fine up to \$15,000. The bill additionally states that nurses, counselors, teachers, principals, and other administrative school officials shall not withhold from a minor’s parents or guardian that their child’s “perception of his or her gender or sex is inconsistent with the minor’s sex” assigned at birth and shall not encourage a minor to do so. Shortly after enactment, a federal lawsuit (<https://www.glad.org/wp-content/uploads/2022/04/eknes-tucker-v-ivey-complaint-4-19.pdf>) challenging the law was filed by four Alabama families with transgender children, two healthcare providers, and a clergy member. Subsequently, the U.S. Department of Justice (DOJ) joined (<https://www.glad.org/wp-content/uploads/2022/05/doj-amended-complaint.pdf>) the case as an additional plaintiff challenging the law. This case has been consolidated with another lawsuit ([https://www.lambdalegal.org/sites/default/files/legal-docs/downloads/2022.4.11\\_complaint.pdf](https://www.lambdalegal.org/sites/default/files/legal-docs/downloads/2022.4.11_complaint.pdf)) filed by two other Alabama families with transgender children, which raises similar challenges. In May 2022, a federal district court entered ([https://ecf.almd.uscourts.gov/cgi-bin/show\\_public\\_doc?2022cv0184-107](https://ecf.almd.uscourts.gov/cgi-bin/show_public_doc?2022cv0184-107)) a preliminary injunction, blocking enforcement of several sections of the Alabama law while the litigation is pending. Specifically, the preliminary injunction applies to the sections of the law that prohibit puberty blockers and hormone therapy. Other sections of the law remain in effect, including the prohibition on surgical intervention and the prohibition on school officials keeping secret or encouraging or compelling children to keep secret certain gender-identity information from children’s parents. When deciding to grant the preliminary injunction, the district court found that the plaintiffs were substantially likely to succeed on their claim that the sections of the law that prohibit puberty blockers and hormone therapy unconstitutionally violate parents’ fundamental right to autonomy under the 14<sup>th</sup> Amendment’s due process clause by prohibiting parents from obtaining medical treatment for their children subject to medically accepted standards. The court also found that the plaintiffs were substantially likely to succeed on their claim that these sections of the law are unconstitutional sex discrimination in violation of the 14<sup>th</sup> Amendment’s equal protection clause because the law denies medically necessary services only to transgender minors, while allowing those services for cisgender minors. Additionally, the court found that the plaintiffs were likely to suffer irreparable harm, in the form of “severe physical and/or psychological harm” and “significant deterioration in their familial relationships and educational performance,” if the law was not blocked. The state has appealed ([https://www.pacermonitor.com/public/case/44278216/EknesTucker\\_et\\_al\\_v\\_Ivey\\_et\\_al](https://www.pacermonitor.com/public/case/44278216/EknesTucker_et_al_v_Ivey_et_al)) the district court’s decision to the 11<sup>th</sup> Circuit.
- **Arkansas.** In 2021, on override of Governor Hutchinson’s veto, Arkansas lawmakers passed legislation (<https://www.arkleg.state.ar.us/Bills/Detail?id=HB1570&ddBienniumSession=2021%2F2021R>) prohibiting gender-affirming treatment for minors, including puberty blockers, hormone therapy, and gender affirming surgery. The law also prohibits medical providers from making referrals to other providers for minors seeking these procedures. Under the law, medical providers offering gender affirming care or providing referrals for such care to minors may be subject to discipline by relevant licensing entities. The legislation additionally includes a prohibition on private insurance coverage of gender affirming services for minors and a prohibition on the use of public funds, including through Medicaid, for coverage of these services for minors. In May 2021, four families of transgender youth and two physicians challenged (<https://www.aclu.org/legal-document/brandt-et-al-v-rutledge-et-al-complaint>) the Arkansas law in federal court, arguing that the law is illegal sex discrimination under the 14<sup>th</sup> Amendment’s equal protection clause. They also argue that the law violates parents’ right to autonomy protected by the 14<sup>th</sup> Amendment’s due process clause and violates the families and physicians’ right to free speech under the 1<sup>st</sup> Amendment. The U.S. Department of Justice (DOJ) filed a statement of interest (<https://storage.courtlistener.com/recap/gov.uscourts.ared.128159/gov.uscourts.ared.128159.19.0.pdf>) in

support of the plaintiffs' motion for a preliminary injunction in the Arkansas case. DOJ argued that the Arkansas law violates the Equal Protection Clause of the 14<sup>th</sup> Amendment because the state law "singles out transgender minors. . . specifically and discriminatorily den[ies] their access to medically necessary care based solely on their sex assigned at birth." A preliminary injunction was granted (<https://storage.courtlistener.com/recap/gov.uscourts.ared.128159/gov.uscourts.ared.128159.64.0.pdf>) in July 2021, temporarily blocking the state from enforcing the law while the case is pending. The court found that the plaintiffs were likely to succeed on all three of their Constitutional claims, and that the law was not substantially related to the state's interest in protecting children or regulating physicians' ethics because the law allows the same medical treatments for cisgender minors. The court also found that the plaintiffs will suffer irreparable physical and psychological harm if the law is not blocked. The court also denied (<https://www.aclu.org/legal-document/brandt-et-al-v-rutledge-et-al-order-denying-defendants-motion-dismiss-and-granting>) the state's motion to dismiss the case. The state has appealed (<https://www.aclu.org/legal-document/brandt-et-al-v-rutledge-et-al-defendants-appellants-statement-issues-appeal-0>) both of those decisions to the 8<sup>th</sup> Circuit, where a decision is currently pending. A group of 19 states filed an amicus brief (<https://www.aclu.org/legal-document/brandt-et-al-v-rutledge-et-al-amicus-brief-alabama-and-18-other-states>) in support of the state's appeal.<sup>1</sup> They argue that states have "broad authority" to regulate gender affirming services, because they allege this area is "fraught with medical uncertainties," contrary to the evidence from the American Academy of Pediatrics and the American Medical Association on which the lower court relied. Another group of 20 states and the District of Columbia filed an amicus brief (<https://www.aclu.org/legal-document/brandt-et-al-v-rutledge-et-al-amicus-brief-california-and-20-other-states>) in support of the plaintiffs.<sup>2</sup> They argue that they and their residents are economically, physically, and mentally harmed by discrimination against transgender people. They also argue that their states "protect access to gender-affirming healthcare based on well-accepted medical standards" and that Arkansas' law is unconstitutional sex discrimination and "ignores medical consensus as well as decisions made between doctors and their patients." Litigation in the case continues in the district court, where the case is scheduled (<https://www.courtlistener.com/docket/59935566/brandt-v-rutledge/>) for trial during the week of July 25, 2022.

- **Texas.** In February 2022, Governor Abbott of Texas issued a directive (<https://gov.texas.gov/uploads/files/press/O-MastersJaime202202221358.pdf>) defining certain gender affirming services for youth as child abuse, and calling for investigation of and penalties for parents who support their children in taking certain medications or undertaking certain procedures, which could include (<https://www.lambdalegal.org/sites/default/files/legal-docs/downloads/petition - doe v. abbott - final 1 2.pdf>) the removal of their children. In addition, under the directive, health care professionals who facilitate access to these services could also face penalties and a range of professionals in the state would be mandated to report known use of the specified gender affirming services. While other states with proposed policies to limit youth access to gender affirming care include penalties for parents who facilitate access to these services (see below), no implemented policy ties the parental role to child abuse as the Texas directive does. In the wake of litigation (<https://www.lambdalegal.org/sites/default/files/legal-docs/downloads/petition - doe v. abbott - final 1 2.pdf>), a state court entered a temporary injunction (<https://www.lambdalegal.org/in-court/legal-docs/abbott tx 20220311 order-granting-temporary-injunction>) preventing the state from enforcing the directive while the case is pending. The court found that the governor acted outside his statutory legal authority in issuing the directive, and the plaintiffs will suffer immediate and irreparable injuries, including loss of employment, deprivation of constitutional rights, and loss of medically necessary care. However, the Texas Supreme Court subsequently modified (<https://www.lambdalegal.org/in-court/legal-docs/abbott tx 20220513 opinion-ruling>) the temporary injunction, finding that the courts lack authority to prevent enforcement of the directive statewide. Instead, the state is prohibited from enforcing the directive only against the plaintiffs involved in the lawsuit while the case is pending. The case is scheduled (<https://www.lambdalegal.org/in-court/legal-docs/abbott tx 20220311 order-granting-temporary-injunction>) for trial on July 11, 2022.

- **Arizona.** In March 2022, Arizona Governor Ducey signed legislation (<https://www.azleg.gov/legtext/55leg/2R/laws/0104.pdf>) into law that bans physicians from providing



gender-affirming surgical treatment to minors. The legislation does not address hormone therapy or puberty blockers.

In addition, since January 2022 **15 states introduced a total of 25 bills** (<https://freedomforallamericans.org/legislative-tracker/medical-care-bans/>) that would restrict access to gender-affirming care for youth. Provisions in these bills varied considerably and include those that would:

- criminalize or impose/permit professional disciplinary action (e.g. revoking or suspending licensure) on health professionals providing gender-affirming care to minors, in some cases labeling such services as child abuse
- penalize parents aiding in youth accessing gender-affirming care
- permit individuals to file for damages against providers who violate such laws
- limit insurance coverage or payment for gender affirming services or prohibit the use of state funds for such services

Beyond these policies, states have also passed or considered other policies restricting access, including so called “bathroom bills” which restrict access to bathrooms or locker rooms based on sex assigned at birth, the recent Florida “don’t say gay” bill that would prohibit classroom discussion on sexual orientation or gender identity, and laws that limit transgender students’ access to sports. While these policies are not directly tied to health or health care access, their attempts to limit access to social spaces and services and present non-affirming sentiments could **negatively impact** (<https://www.nationalacademies.org/our-work/understanding-the-status-and-well-being-of-sexual-and-gender-diverse-populations>) LGBTQ+ people’s mental health and well-being. For instance, **one recent study**

(<https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2680808#.YioI76UBIdI.twitter>) found that state laws permitting the denial of services to same-sex couples “are associated with increases in mental distress among sexual minority adults.” In addition, and directly related to health care, Florida recently released non-binding **guidance**

(<https://www.floridahealth.gov/documents/newsroom/press-releases/2022/04/20220420-gender-dysphoria-guidance.pdf>) recommending against gender affirming care for youth.

## **What states have introduced protections related to sexual orientation and gender identity in health care?**

Though not specific to youth access to gender affirming care, some states have **adopted policies** ([https://www.lgbtmap.org/equality-maps/healthcare\\_laws\\_and\\_policies](https://www.lgbtmap.org/equality-maps/healthcare_laws_and_policies)) that provide health care protections to LGBTQ+ people, including:

- prohibitions on health insurance discrimination based on sexual orientation and/or
- requirements that state Medicaid programs explicitly cover health services related to gender transition

## **What is federal policy regarding gender-affirming services?**

The Biden administration has taken multiple steps to promote access to health care for LGBTQ+ people and to prohibit discrimination on the basis of sexual orientation and gender identity, including:

- On his first day in office, President Biden signed an **executive order** (<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-preventing-and->

combating-discrimination-on-basis-of-gender-identity-or-sexual-orientation/) directing federal agencies to review existing regulations and policies in order to “prevent and combat discrimination” based on gender identity and sexual orientation. The order states that “people should be able to access healthcare...without being subjected to sex discrimination” and views sex nondiscrimination protections as encompassing sexual orientation and gender identity, following the Supreme Court’s *Bostock* ([https://www.supremecourt.gov/opinions/19pdf/17-1618\\_hfci.pdf](https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf)).

- On May 10, 2021, also in light of the *Bostock* ruling, the Biden Administration announced (<https://www.hhs.gov/about/news/2021/05/10/hhs-announces-prohibition-sex-discrimination-includes-discrimination-basis-sexual-orientation-gender-identity.html>) that the Department of Health and Human Services’ (HHS) Office for Civil Rights (OCR) would include gender identity and sexual orientation in its interpretation and enforcement (<https://www.federalregister.gov/documents/2021/05/25/2021-10477/notification-of-interpretation-and-enforcement-of-section-1557-of-the-affordable-care-act-and-title>) of Section 1557’s prohibition against sex discrimination. Section 1557 of the Affordable Care Act (ACA) contains the law’s primary nondiscrimination provisions, including a prohibition on discrimination on the basis of sex by a range of health care entities and programs that receive federal funding. The May 2021 announcement marked both a reversal of Trump Administration policy, which eliminated gender identity and sex stereotyping from the regulations, and an expansion of Obama Administration policy, which included gender identity and sex stereotyping in the definition of sex discrimination but omitted sexual orientation. Following the *Bostock* ruling, two federal district courts issued nationwide preliminary injunctions, blocking implementation of several provisions of the Trump Administration’s regulations related to Section 1557. Biden Administration implementing regulations on Section 1557 are expected to expand on the May announcement.

In addition to establishing a foundation of nondiscrimination policies for LGBTQ+ people, and participating in the Alabama and Arkansas cases as noted above, the administration has responded specifically to the Texas directive, denouncing it as discriminatory and stating that gender affirming care for youth should be supported as follows:

- Statement from President Biden: (<https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/02/statement-by-president-biden-on-texas-attacks-on-transgender-youth/>) The statement from the president states that the administration is “putting the state of Texas on notice that their discriminatory actions put children’s lives at risk. These announcements make clear that rather than weaponizing child protective services against loving families, child welfare agencies should instead expand access to gender-affirming care for transgender children.”
- Statement from Dept. of Health and Human Services (HHS) Sec. Becerra (<http://www.hhs.gov/about/news/2022/03/02/statement-hhs-secretary-xavier-becerra-reaffirming-hhs-support-and-protection-for-lgbtqi-children-and-youth.html>): Becerra’s statement reaffirms “HHS’s commitment to supporting and protecting transgender youth and their parents, caretakers and families” and details action items the administration is taking in response to the Texas directive including those that follow below.
- Following the actions in Texas, HHS’s Administration on Children, Youth and Families issued an Information Memorandum (<https://www.acf.hhs.gov/cb/policy-guidance/im-22-01>) to state child welfare agencies writing that child welfare systems should advance safety and support for LGBTQI+ youth, including though access to gender affirming care.
- Also in response to Texas, HHS’s OCR issued a new notice and guidance (<https://www.hhs.gov/sites/default/files/hhs-ocr-notice-and-guidance-gender-affirming-care.pdf>) which lays out federal enforcement policy for nondiscrimination related to gender identity. The guidance relies on ACA Section 1557’s prohibition against sex discrimination, including gender identity, in health programs and activities receiving federal financial assistance; Section 504 of the Rehabilitation Act, which prohibits discrimination on the basis of disability by entities receiving federal financial assistance; and Title II of the Americans with Disabilities Act (ADA), which prohibits discrimination on the basis of disability by state and local governments.

- Specifically, the guidance states that categorically refusing treatment based on gender identity is prohibited discrimination under Section 1557. The guidance also states that Section 1557's prohibition against sex-based discrimination is likely violated if a provider reports parents seeking medically necessary gender affirming care for their child to state authorities, if the provider or facility is receiving federal funding. The guidance further states that restricting a provider from providing gender affirming care may violate Section 1557.
- The guidance states that in cases where gender dysphoria qualifies as a disability, restrictions that prevent individuals from receiving medically necessary care based on a diagnosis or perception of gender dysphoria may also violate Section 504 and the ADA.
- It also articulates requirements under the Health Insurance Portability and Accountability Act (HIPAA) that prohibit health plans and providers from disclosing protected health information, such as use of gender affirming physical or mental health care without patient consent, except in limited circumstances.

OCR enforces each of these federal laws, and the guidance states that parents or caregivers who believe their child has been denied health care, including gender affirming care, and health care providers who believe they have been unlawfully restricted from providing such care, may file an administrative complaint for OCR to investigate.

## What do major medical societies say about gender affirming services?

Most major U.S. medical associations, including those in the fields of pediatrics, endocrinology, psychiatry, and psychology, have issued statements recognizing the medical necessity and appropriateness of gender affirming care for youth, typically noting harmful effects of denying access to these services. These include statements from the American Medical Association (<https://www.ama-assn.org/press-center/press-releases/ama-reinforces-opposition-restrictions-transgender-medical-care>), American Academy of Pediatrics (<https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for>), the Endocrine Society (<https://www.endocrine.org/news-and-advocacy/news-room/2022/endocrine-society-alarmed-at-criminalization-of-transgender-medicine>), American Psychological Association (<https://www.apa.org/news/press/releases/2022/02/report-parents-transgender-children>), American Psychiatric Association (<https://www.psychiatry.org/newsroom/news-releases/physicians-oppose-texas-efforts-to-interfere-in-the-patient-physician-relationship-and-criminalize-gender-affirming-care>), and the World Professional Association for Transgender Health (<https://www.wpath.org/media/cms/Documents/USPATH/2022/USPATH%20Statement%20re%20TX%20Gov%20Abuse%20Claim.pdf?t=1645711882>), among others (<https://transhealthproject.org/resources/medical-organization-statements/>), which in some cases were specifically issued in response to the Arkansas legislation and Texas directive. Further, 23 medical associations or societies, including those named above, together filed an amicus brief (<https://www.endocrine.org/-/media/endocrine/files/advocacy/amicus-briefs/2022/texas-20220310-brief-of-amici-curiae-in-support-of-plaintiffs-application-for-temporary-injunction.pdf>) in the case filed against Texas Gov. Abbott opposing the state directive. The brief states that denying gender affirming treatment to adolescents who need them would irreparably harm their health and that enforcing the directive would irreparably harm providers who are forced to choose between potentially facing civil and criminal penalties or endangering their patients. A similar amicus brief (<https://www.endocrine.org/-/media/endocrine/files/advocacy/amicus-briefs/2021/20210623-mot-for-aap--additional-national--state-medical-mental-health-and-educational-orgs-for-leave.pdf>) was filed in the Arkansas case.

Additionally, the Endocrine Society supports gender affirming care for young people in their clinical practice guidelines (<https://academic.oup.com/jcem/article/102/11/3869/4157558?login=false>), as does the World Professional Association for Transgender Health's standards of care



(<https://www.wpath.org/publications/soc>). Together these guidelines form the standard of care for treatment of gender dysphoria.

## What are the implications of access restrictions?

State policies restricting youth access to gender affirming care could have significant health and other implications for LGBTQ+ youth, their parents, health care providers, and, in some cases, other community members:

**LGBTQ+ youth:** LGBTQ+ youth experience higher rates of depression, anxiety, and suicidality than their non-LGBTQ+ peers. In one [CDC study](https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6803a3-H.pdf) (<https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6803a3-H.pdf>) of youth in 10 states and 9 urban school districts, a higher share of transgender students reported suicide risk outcomes across a range of metrics than cisgender students. These include, in the past 12 months: having felt sad or hopeless, considered attempting suicide, made a suicide plan, attempted suicide, or had a suicide attempt treated by a doctor or nurse. Inability to access gender affirming care, such as [puberty suppressors](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7073269/) (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7073269/>) and [hormone therapy](https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2789423) (<https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2789423>), has been linked to worse mental health outcomes for transgender youth, including with respect to suicidal ideation, potentially exacerbating the already existing disparities. Conversely, access to this care is associated with [improved](https://whatweknow.inequality.cornell.edu/topics/lgbt-equality/what-does-the-scholarly-research-say-about-the-well-being-of-transgender-people/) (<https://whatweknow.inequality.cornell.edu/topics/lgbt-equality/what-does-the-scholarly-research-say-about-the-well-being-of-transgender-people/>) outcomes in these domains. Policies that aim to prohibit or interrupt access to gender affirming care for youth can therefore have negative implications for health in potentially life-threatening ways.

In addition, LGBTQ people report higher rates of [negative experiences](https://www.kff.org/report-section/lgbt-peoples-health-and-experiences-accessing-care-report/) (<https://www.kff.org/report-section/lgbt-peoples-health-and-experiences-accessing-care-report/>) with medical providers, so creating barriers to gender affirming care could further challenge transgender people's relationship with the healthcare system.

Finally, with the Texas directive specifically, and in several other states with bills under consideration, youth are vulnerable to secondary trauma, knowing that if they seek such care, their families and providers could be subject to penalties, and, in the case of Texas, children could be separated from their parents.

**Parents:** In several states with bills under consideration, parents who facilitate access to evidence-based and potentially lifesaving gender affirming services for their children could face penalties. Under the Texas directive, because it is defined as child abuse, parents who facilitate access to gender affirming care for their children, could be subject to penalties, including losing custody of their children. This may place parents in the position of either supporting their children in accessing care supported by medical evidence and facing penalties or denying their children access in an effort not to make their family vulnerable to investigation and potential separation. Each option for parents in this scenario has the potential to be traumatic for the family, and for youth in particular.

**Providers:** Like parents, providers may be torn between what the medical literature supports is in the best interest of their patients or facing potential sanctions, including violating professional ethics around confidentiality, as in the case of Texas. The American Psychological Association said in a [statement](https://www.apa.org/news/press/releases/2022/02/report-parents-transgender-children) (<https://www.apa.org/news/press/releases/2022/02/report-parents-transgender-children>) that a requirement such as the Texas directive is a violation of both patient confidentiality and professional ethics. Under such circumstances, providers may be forced to decide whether they

will provide the highest standard of care for their patients and potentially face sanctions, or obey the state directive but withhold care and potentially violate patient confidentiality and professional ethics. Further, as noted above, the Biden Administration has stated that HIPAA requirements prohibit providers from disclosing use of gender affirming care without patient consent, except as in narrow circumstances. However, following HIPAA requirements in this case may make providers vulnerable to state sanction under the directive.

**Teachers and others:** In Texas, in addition to health care providers, other mandated reporters, such as teachers, could also face penalties for failure to report youth known to be accessing gender affirming care. The directive also states that “there are similar reporting requirements and criminal penalties for members of the general public,” extending the policy’s reach to practically anyone with knowledge of youth accessing these services.

## Looking forward

The legal and policy landscape regarding youth access to gender affirming care is shifting across the country, with an increasing number of states seeking to limit such access and impose penalties. Such policies may have significant, negative implications for the health of young people. At the same time, these states are at odds with federal law and policy, and in two recent cases courts have temporarily blocked enforcement of such restrictions. Moving ahead, it will be important to watch how state bills still under consideration unfold and the final outcome of cases in Alabama, Arkansas, and Texas. Decisions in these cases could determine how such policies intersect with existing federal policies — including Section 1557’s prohibition on sex based discrimination in health care, federal disability non-discrimination protections, and HIPAA patient privacy protections — as well as providers’ professional ethics standards.

## Endnotes

1. These states include Alabama, Alaska, Arizona, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, South Carolina, South Dakota, Tennessee, Texas, Utah, and West Virginia.

[← Return to text \(https://www.kff.org/other/issue-brief/youth-access-to-gender-affirming-care-the-federal-and-state-policy-landscape/#endnote\\_link\\_555643-1\)](https://www.kff.org/other/issue-brief/youth-access-to-gender-affirming-care-the-federal-and-state-policy-landscape/#endnote_link_555643-1)

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2. These states include California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, and Washington.

[← Return to text \(https://www.kff.org/other/issue-brief/youth-access-to-gender-affirming-care-the-federal-and-state-policy-landscape/#endnote\\_link\\_555643-2\)](https://www.kff.org/other/issue-brief/youth-access-to-gender-affirming-care-the-federal-and-state-policy-landscape/#endnote_link_555643-2)

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