No. 23-12155

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

AUGUST DEKKER, ET AL,
Plaintiffs-Appellees,

v.

SECRETARY, FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION, ET AL,
Defendants-Appellants

On Appeal from the United States District Court for the
Northern District of Florida
Case No: 4:22-cv-00325-RH-MAF

BRIEF OF *AMICI CURIAE* AMERICAN ACADEMY OF PEDIATRICS AND ADDITIONAL NATIONAL AND STATE MEDICAL AND MENTAL HEALTH ORGANIZATIONS IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

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CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Local Rule 26.1–1, the undersigned counsel for the American Academy of Pediatrics ("AAP"), the Academic Pediatric Association, the American Academy of Child and Adolescent Psychiatry ("AACAP"), American Academy of Family Physicians ("AAFP"), the American Academy of Nursing ("AAN"), the American Association of Physicians for Human Rights, Inc. d/b/a GLMA: Health Professionals Advancing LGBTQ+ Equality ("GLMA"), the American College of Obstetricians and Gynecologists ("ACOG"), the American College of Osteopathic Pediatricians ("ACOP"), the American College of Physicians ("ACP"), the American Medical Association ("AMA"), the American Pediatric Society ("APS"), the American Psychiatric Association ("APA"), the Association of Medical School Pediatric Department Chairs, Inc. ("AMSPDC"), the Association of American Medical Colleges ("AAMC"), the Endocrine Society, the Florida Chapter of the American Academy of Pediatrics ("FCAAP"), the National Association of Pediatric Nurse Practitioners ("NAPNAP"), the Pediatric Endocrine Society ("PES"), the Society for Adolescent Health and Medicine ("SAHM"), the Society for Pediatric Research ("SPR"), the Society of Pediatric Nurses ("SPN"), the Societies for Pediatric Urology ("SPU"), and the World Professional Association for Transgender Health ("WPATH") certify that:

1. AAP, the Academic Pediatric Association, AACAP, AAFP, AAN, GLMA, ACOG, ACOP, ACP, AMA, APS, APA, AMSPDC, AAMC, the Endocrine Society, FCAAP, NAPNAP, PES, SAHM, SPR, SPN, SPU, and WPATH, respectively, have no parent corporation.

2. No corporations hold any stock in AAP, the Academic Pediatric Association, AACAP, AAFP, AAN, GLMA, ACOG, ACOP, ACP, AMA, APS, APA, AMSPDC, AAMC, the Endocrine Society, FCAAP, NAPNAP, PES, SAHM, SPR, SPN, SPU, or WPATH.

3. Counsel certifies that the following persons and parties, in addition to the above-named amici, may have an interest in the outcome of this case:

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5. Antommaria, Armand – Witness
6. Bailey, Andrew – Counsel for Amicus
7. Baker, Kellan – Witness
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160. Wilson, Alan – Counsel for Amicus

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STATEMENT OF THE ISSUE

Whether the district court correctly enjoined Defendants-Appellants from enforcing Rule 50G-1.050(7) of the Florida Administrative Code.

SUMMARY OF ARGUMENT

Rule 59G-1.050(7) of the Florida Administrative Code (the "Medicaid Ban") eliminates Florida Medicaid coverage for critical, medically necessary, evidence-based treatments for gender dysphoria.[2] Denying such evidence-based medical care to adolescents who meet the requisite medical criteria puts them at risk of significant harm. Below, *amici* provide the Court with an accurate description of the relevant treatment guidelines and summarize the scientific evidence supporting the medical interventions prohibited by the Medicaid Ban. While the Medicaid Ban affects all patients who are receiving treatment for gender dysphoria, this brief focuses primarily on the experience of transgender adolescents.[3]

Gender dysphoria is a clinical condition that is marked by distress due to an incongruence between the patient's gender identity (i.e., the innate sense of oneself as being a particular gender) and sex assigned at birth. This incongruence can lead to clinically significant distress and impair functioning in many aspects of the

[2] Rule 59G-1.050(7) prohibits Florida Medicaid coverage for medical treatments that are administered for the purpose of treating gender dysphoria, including "puberty blockers," and "hormones and hormone antagonists" which, as discussed in this brief, are medically necessary care for certain adolescents with gender dysphoria.

[3] Because this brief focuses primarily on adolescents and because the district court's injunction does not apply to surgeries, this brief does not discuss surgeries that are typically available to transgender adults.

patient's life.[4] If not treated, or treated improperly, gender dysphoria can result in debilitating anxiety, depression, and self-harm, and is associated with higher rates of suicide. As such, the effective treatment of gender dysphoria saves lives.

The widely accepted recommendation of the medical community, including that of the respected professional organizations participating here as *amici*, is that the standard of care for treating gender 02 Tc1.1 (ra4)-4.stedf th a

can alleviate clinically significant distress and lead to significant improvements in the mental health and overall well-being of adolescents with gender dysphoria.[7]

The Medicaid Ban disregards this medical evidence by precluding Florida Medicaid reimbursement for the treatment of patients with gender dysphoria in accordance with the accepted standard of care. Accordingly, *amici* urge this Court to affirm the district court's order granting an injunction.

ARGUMENT

This brief first provides background on gender identity and gender dysphoria. It then describes the professionally-accepted medical guidelines for treating gender dysphoria as they apply to adolescents, the scientifically rigorous process by which these guidelines were developed, t

I. Understanding Gender Identity and Gender Dysphoria.

gender dysphoria, a serious medical condition in which the patient experiences significant distress that can lead to "impairment in peer and/or family relationships, school performance, or other aspects of their life."[14] Gender dysphoria is a formal diagnosis under the American Psychiatric Association's Diagnostic and Statistical Manual (DSM-5-TR).[15]

If untreated or inadequately treated, gender dysphoria can cause depression, anxiety, self-harm, and suicidality.[16] Indeed, over 60% of transgender adolescents and young adults reported having engaged in self-harm during the preceding 12

12 months.[19]

II. The Widely Accepted Guidelines for Treating Adolescents with Gender Dysphoria Provide for Medical Interventions When Indicated.

The widely accepted view of the professional medical community is that gender-affirming care is the appropriate treatment for gender dysphoria and that, for some adolescents, gender-affirming medical interventions are necessary.[20] This care greatly reduces the negative physical and mental health consequences that result when gender dysphoria is untreated.[21]

A. The Gender Dysphoria Treatment Guidelines Include Thorough Mental Health Assessments and, for Some Adolescents, Medical Interventions.

The treatment protocols for gender dysphoria are laid out in established, evidence-based clinical guidelines: (i) the Endocrine Society Clinical Practice Guideline for Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons, and (ii) the WPATH Standards of Care for the Health of Transgender and

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[19] *See* Michelle M. Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students–19 States and Large Urban School Districts, 2017*, US Dep't of Health and Human Servs., Centers for Disease Control & Prevention, 68 MORBIDITY & MORTALITY WKLY. REP. 67, 70 (2019), https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6803a3-H.pdf.

[20] *See, e.g.*, Endocrine Soc'y, *Transgender Health: An Endocrine Society Position Statement* (2020), https://www.endocrine.org/advocacy/position-statements/transgender-health.

[21] *See id.*

Gender Diverse People (together, the "Guidelines").[22] The Guidelines have been developed by expert clinicians and researchers who have worked with patients with gender dysphoria for many years.

The Guidelines provide that all youth with gender dysphoria should be evaluated, diagnosed, and treated by a qualified health care professional ("HCP"). Further, the Guidelines provide that each patient who receives gender-affirming care should receive only evidence-based, medically necessary, and appropriate interventions that are tailored to the patient's individual needs.

1. A Robust Diagnostic Assessment Is Required Before Medical Interventions Are Provided.

According to the Guidelines, gender-affirming care for adolescents begins with a thorough evaluation by a HCP who: (1) is licensed by their statutory body and holds a master's degree or equivalent in a relevant clinical field; (2) has expertise and received theoretical and evidence-based training in child, adolescent, and family mental health; (3) has expertise and received training in gender identity development, gender diversity in children and adolescents, can assess capacity to

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[22] Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons*, 102(11) J. CLINICAL ENDOCRINOLOGY & METABOLISM 3869 (Nov. 2017) (hereinafter, "Endocrine Soc'y Guidelines"), https://academic.oup.com/jcem/article/102/11/3869/4157558; WPATH, *Standards*

psychotherapy and social transitioning.[27] The Guidelines do *not* recommend that prepubertal children with

ability to consent have been addressed; (5) the adolescent has been informed of the reproductive effects of treatment in the context of their stage in pubertal development and discussed fertility preservation options; and (6) the adolescent has reached Tanner stage 2 of puberty to initiate pubertal suppression.[30] Further, a pediatric endocrinologist or other clinician experienced in pubertal assessment must (7) agree with the indication for treatment, (8) confirm the patient has started puberty, and (9) confirm that there are no medical contraindications.[31]

If all of the above criteria are met, and the patient and their parents provide informed consent, gonadotropin-releasing hormone (GnRH) analogues, or "puberty blockers," may be offered beginning at the onset of puberty.[32] The purpose of puberty blockers is to delay pubertal development until adolescents are old enough and have had sufficient time to make more informed decisions about whether to pursue further treatments.[33] Puberty blockers also can make pursuing transition later in life easier, because they prevent irreversible bodily changes such as protrusion of

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[30] WPATH Guidelines, *supra* note 22, at S59–65.

[31] Endocrine Soc'y Guidelines, *supra* note 22, at 3878 tbl.5.

[32] WPATH Guidelines, *supra* note 22, at S61–62, S64; Endocrine Soc'y Guidelines, *supra* note 22, at 3878 tbl.5; Martin, *Criminalization of Gender-Affirming Care—Interfering with Essential Treatment for Transgender Children and Adolescents*, *supra* note 7.

[33] WPATH Guidelines, *supra* note 22, at S112.

the Adam's apple or breast growth.[34] Puberty blockers have well-known efficacy and side-effect profiles,[35] and their effects are generally reversible.[36] In fact, puberty blockers have been used by pediatric endocrinologists for more than 40 years for the treatment of precocious puberty.[37] The risks of any serious adverse effects from these treatments are exceedingly rare when provided under clinical supervision.[38]

Later in adolescenceficacy 4

studies have been published that investigated the use of puberty blockers on adolescents with gender dysphoria,[54] and nine studies have been published that investigated the use of hormone therapy to treat adolescents with gender dysphoria.[55]

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[54] *See*, *e.g.*, Christal Achille et al.,

These studies find positive mental health outcomes for those adolescents who received puberty blockers or hormone therapy, including statistically significant reductions in anxiety, depression, and suicidal ideation.[56]

For example, a 2020 study analyzed survey data from 89 transgender adults who had access to puberty blockers while adolescents and from more than 3,400 transgender adults who did not.[57] The study found that those who received puberty

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PRAC. PEDIATRIC PSYCH. 302 (2019), https://psycnet.apa.org/record/2019-52280-009; Diane Chen et al., *Psychosocial Functioning in Transgender Youth after 2 Years of Hormones*, 388(3) NEW ENG. J. MED 240-50 (2023); Diego Lopez de Lara et al., *Psychosocial Assessment in Transgender Adolescents*, 93(1) ANALES DE PEDIATRIA 41–48 (English ed. 2020), https://www.researchgate.net/publication/342652073; Annelou L.C. De Vries et al., *Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment*, 134(4) PEDIATRICS 696–704 (2014); Rittakerttu Kaltiala et al., *Adolescent Development And Psychosocial Functioning After Starting Cross-Sex Hormones For Gender Dysphoria*, 74(3) NORDIC J. PSYCHIATRY 213 (2020); Kuper, *supra* note 54; Amy E. Green et al., *Association of Gender-Affirming Hormone Therapy with Depression, Thoughts of Suicide, and Attempted Suicide Among Transgender and Nonbinary Youth*, J. ADOLESCENT HEALTH (2021), https://www.jahonline.org/article/S1054-139X(21)00568-1/fulltext; Jack L. Turban et al., *Access To Gender-Affirming Hormones During Adolescence and Mental Health Outcomes Among Transgender Adults*, J. PLOS ONE (2022), https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0261039.

[56] The data likewise indicates that adults who receive gender-affirming care experience positive mental health outcomes. *See, e.g.*, Zoe Aldridge et al., *Long Term Effect of Gender Affirming Hormone Treatment on Depression and Anxiety Symptoms in Transgender People: A Prospective Cohort Study*, 9 ANDROLOGY 1808–1816 (2021).

[57] *See* Turban, *Pubertal Suppression For Transgender Youth And Risk of Suicidal Ideation*, *supra* note 54.

blocking treatment had lower odds of lifetime suicidal ideation than those who wanted puberty blocking treatment but did not receive it, even after adjusting for demographic variables and level of family support.[58] Approximately *nine in ten* transgender adults who wanted puberty blocking treatment but did not receive it reported lifetime suicidal ideation.[59] Additionally, a longitudinal study of nearly 50 transgender adolescents found that suicidality was decreased by a statistically-signifi

associated with a statistically significant decrease in depression and anxiety.[63] "Remarkably, this study demonstrated that these transgender adolescents and young adults had a sense of well-being that was equivalent or superior to that seen in age-matched controls from the general population."[64]

As scientists and researchers, *amici* always welcome more research, including on this crucial topic. However, the available data indicate that the gender-affirming treatments prohibited by the Medicaid Ban are effective for the treatment of gender dysphoria. As the U.S. Court of Appeals for the Eighth Circuit recently recognized in affirming an order preliminarily enjoining enforcement of a similar Arkansas law, "there is substantial evidence … that the [Arkansas] Act prohibits medical treatment that conforms with the recognized standard of care."[65]

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[63] Vries, *Young Adult Psychological outcome After Puberty Suppression and gender Reassignment*, *supra* note 54.

[64] Stephen M. Rosenthal, *Challenges in the Care of Transgender and Gender-Diverse Youth: An Endocrinologist's View*, 17(10) NATURE REV. E

III. The Material Supporting the Medicaid Ban Is Factually Inaccurate and Ignores the Recommendations of the Medical Community.

The purported basis for the Medicaid Ban is the Division of Florida Medicaid's "Generally Accepted Professional Medical Standards Determination on the Treatment of Gender Dysphoria" (the "GAPMS Report").[66] The GAPMS Report asserts that puberty blockers, gender-affirming hormone therapy, and gender-affirming surgeries are not consistent with professional medical standards and that there is insufficient evidence that these interventions are safe and effective.[67] However, this assertion is premised on speculative and discredited claims about gender dysphoria and mischaracterizations of the Guidelines and scientific research regarding these gender-affirming medical interventions.

A. There is No Evidence That Gender Dysphoria Can Be Caused by Underlying Mental Illness or "Social Contagion."

The GAPMS Report speculates that mental health concerns such as

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[66] Available at: https://ahca.myflorida.com/letkidsbekids/docs/AHCA_GAPMS_June_2022_Report.pdf (June 2, 2022). The GAPMS report also serves as the basis for Rules 64B8-9.019 and 64B15-14.014 of the Florida Administrative Code, recently promulgated rules which prohig1dvp/BBox [71. -1.15 Td[(9.)3 (019 a)4 (nd 64B3)3.9 (A)3 (d9ng)]TJ0 T8 sp

dysphoria" in adolescents.[71] However, there is no credible evidence to support this argument. The term "rapid onset gender dysphoria" was coined in 2018 by the author of an anonymous survey of parents of transgender youth, who were recruited from websites that promote the belief that "social contagion" causes transgender identity.[72] The survey, which is the only source cited by the GAPMS Report in support of its claim, suffers from numerous flaws and has been widely discredited.[73] Moreover, the journal in which the survey was published subsequently published an extensive correction stating, among other things, that "[r]apid-

does not cite or even mention this correction.[75]

Moreover, subsequent peer-reviewed research has not found support "for a new etiologic phenomenon of rapid onset gender dysphoria during adolescence."[76] On the contrary, one recent study showed that most adolescents—nearly 70%—

B. The Vast Majority of Adolescents Diagnosed with Gender Dysphoria Will Persist Through Adulthood.

In addition, while the percentage of adolescents seeking gender-affirming care has increased, that percentage remains very low—only 1.8% of high-school students identify as transgender.[87] Further, research supports that this increase in adolescents

"watchful waiting" is not recommended for adolescents with gender dysphoria.[91] It can cause immense harm by denying these patients the evidence-based treatments that could alleviate their distress, and forcing them to experience full endogenous puberty, resulting in some physical changes that may be reversed—if at all—only through surgery or other invasive procedures.[92]

D. Gender-Affirming Medical Care Is Provided Internationally.

The GAPMS Report wrongly suggests that there is a vigorous international debate over whether to ban gender-affirming medical care.[93] It attempts to rely on examples from the United Kingdom, Sweden, and Finland but, in fact, none of these countries—in contrast to Florida—categorically ban coverage for gender-affirming medical care. The United Kingdom offers gender-affirming medical care through its National Health Service.[94] Sweden offers gender-affirming medical care through

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[91] *Id.*; AAP Policy Statement, *supra* note 4, at 4; WPATH Guidelines, *supra* note 22, at S112–113; *see also Brandt v. Rutledge*, *supra* note 65, 2023 WL 4073727, at *20 ("Watchfu6
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its national health care system, and youth in Sweden are able to access gender-affirming medical care when their providers deem it medically necessary.[95] Finland also offers gender-affirming medical care to transgender adolescents through its national healthcare system.[96]

service-information_s-1.pdf (gender-affirming care in Scotland). The National Health Service in England and Wales recently published an *interim* service specification that narrows some of their policies on gender-affirming medical care for adolescents to incorporate research protocols, but the interim specification does not contemplate a categorical ban on co3-3.f0 -2 Td[(ao31‡No2-0.3 (c05-3Td[(Hfhe)3. (e.811 0

Transgender youth also have access to gender-affirming medical care in developed nations across the world including Australia,[97] Canada,[98] Denmark,[99] Germany,[100] Mexico,[101] New Zealand,[102] Norway,[103] and Spain,[104] among others. Although some of these countries have debated how best to care for transgender patients, none has come close to banning coverage for gender-affirming medical care for all minors. The Medicaid Ban would make Florida an outlier in the international medical community, not the norm.

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[97] *See Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents*, ROYAL CHILDREN-25.adtra

IV. The Medicaid Ban Would Irreparably Harm Many Adolescents with Gender Dysphoria By Denying Them the Treatment They Need.

The Medicaid Ban denies Medicaid recipients in Florida with gender dysphoria access to medical interventions that are designed to improve health outcomes and alleviate suffering and that are grounded in science and endorsed by the medical community. The medical treatments

between lack of access to gender-affirming care and lifetime suicide risk, banning such care can put patients' lives at risk.

CONCLUSION

For the foregoing reasons, the district court's order granting the injunction should be affirmed.

Dated: December 1, 2023

Respectfully submitted,

/s/ Cortlin H. Lannin

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CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record.

/s/ Cortlin H. Lannin
Cortlin H. Lannin