A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS by ENACTing THE “SOUTH CAROLINA’S CHILDREN DESERVE HELP NOT HARM ACT” BY ADDING ARTICLE 3 TO CHAPTER 47, TITLE 40 SO AS TO PROHIBIT PHYSICIANS, OTHER HEALTH CARE PROVIDERS, AND HEALTH CARE FACILITIES FROM PROVIDING OR FACILITATING THE PROVISION OF GENDER TRANSITION PROCEDURES ON MINORS UNDER THE AGE OF EIGHTEEN, TO PROHIBIT THE USE OF PUBLIC FUNDS FOR such GENDER TRANSITION PROCEDURES, TO PROVIDE FOR PROFESSIONAL DISCIPLINE FOR VIOLATION of the provisions of this article, TO CREATE A PRIVATE RIGHT OF ACTION FOR VIOLATION OF THE PROVISIONS OF THIS ARTICLE AND TO ESTABLISH DAMAGES THAT MAY BE AWARDED, AND TO AUTHORIZE THE ATTORNEY GENERAL TO ENFORCE THE PROVISiONS OF THIS ARTICLE; BY ADDING SECTION 38-71-295 SO AS TO PROHIBIT HEALTH BENEFIT PLANS AND HEALTH CARRIERS FROM REIMBURSING FOR GENDER TRANSITION PROCEDURES on MINORS under the age of eighteen; AND FOR OTHER PURPOSES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “South Carolina’s Children Deserve Help Not Harm Act”.

SECTION 2. Chapter 47, Title 40 of the S.C. Code is amended by adding:

Article 3

Gender Reassignment of Minors

Section 40-47-310. For purposes of this article:

(1) “Biological sex” means the biological indication of male or female in the context of reproductive potential or capacity, such as sex chromosomes, naturally occurring sex hormones, gonads, and nonambiguous internal and external genitalia present at birth, including secondary sex characteristics.

(2) “Cross-sex hormones” means:

(a) testosterone or other androgens given to biological females in amounts that create serum levels greater than would normally occur naturally in healthy biological females, which may include, but are not limited to, the following risks:

(i) irreversible infertility;

(ii) severe liver dysfunction;

(iii) coronary artery disease, including heart attacks;

(iv) increased risk of breast, cervical, and uterine cancers;

(v) cerebrovascular disease, including strokes;

(vi) hypertension;

(vii) erythrocytosis, which is an increase in red blood cells;

(viii) sleep apnea;

(ix) type 2 diabetes;

(x) bone density loss; and

(xi) destabilization of psychiatric disorders; and

(b) estrogen given to biological males in amounts that create serum levels greater than would normally occur naturally in healthy biological males, which may include, but are not limited to, the following risks:

(i) irreversible infertility;

(ii) thromboembolic disease, including blood clots;

(iii) cholelithiasis, including gallstones;

(iv) coronary artery disease, including heart attacks;

(v) type 2 diabetes;

(vi) breast cancer;

(vii) macroprolactinoma, which is a tumor of the pituitary gland;

(viii) cerebrovascular disease, including strokes; and

(ix) hypertriglyceridemia, which is an elevated level of triglycerides in the blood.

(3) “Gender” means the psychological, behavioral, social, and cultural aspects of being male or female.

(4) “Gender reassignment surgery” means any surgical service that seeks to surgically alter or remove healthy physical or anatomical characteristics or features that are typical for the individual’s biological sex in order to instill or create physiological or anatomical characteristics that resemble a sex different from the individual’s biological sex including, but not limited to, genital or nongenital gender reassignment surgery performed for the purpose of assisting an individual with a gender transition.

(5) “Gender transition” means the process in which an individual goes from identifying with and living as a gender that corresponds to his or her biological sex to identifying with and living as a gender different from his or her biological sex and may involve social, legal, or physical changes.

(6)(a) “Gender transition procedure” means any medical or surgical service including, but not limited to, physician’s services, inpatient and outpatient hospital services, puberty-blocking drugs, cross-sex hormones, or genital or nongenital gender reassignment surgery, that is provided or performed for the purpose of assisting an individual with a physical gender transition.

(b) The term “gender transition procedure” does not include:

(i) services to individuals born with a medically verifiable disorder of sex development including, but not limited to, an individual with external biological sex characteristics that are irresolvably ambiguous, such as those born with the conditions of 46, XX with virilization, 46, XY with undervirilization, or having both ovarian and testicular tissue;

(ii) services provided when a physician has otherwise diagnosed an individual with a disorder of sexual development and determined through genetic or biochemical testing that the individual does not have normal sex chromosome structure, sex steroid production, or sex steroid hormone action;

(iii) the acute or chronic treatment of any infection, injury, disease, or disorder that has been caused by or exacerbated by the performance of gender transition procedures regardless of whether the gender transition procedure was performed in accordance with state and federal law or whether funding for the gender transition procedure is permissible under Section 40-47-340; or

(iv) any procedure undertaken because the individual suffers from a physical disorder, physical injury, or physical illness that would, as certified by a physician, place the individual in imminent danger of death or impairment of a major bodily function unless surgery is performed.

(7) “Genital gender reassignment surgery” means a surgical procedure performed for the purpose of assisting an individual with a physical gender transition including, but not limited to:

(a) surgical procedures such as penectomy, orchiectomy, vaginoplasty, clitoroplasty, or vulvoplasty for biologically male patients; or

(b) surgical procedures such as hysterectomy, oophorectomy, reconstruction of the urethra, metoidioplasty or phalloplasty, vaginectomy, scrotoplasty, implantation of erection prostheses, or implantation of testicular prostheses for biologically female patients.

(8) “Health care professional” means an individual who is licensed, certified, or otherwise authorized by the laws of this State to administer health care in the ordinary course of the practice of his or her profession, including mental health care providers.

(9) “Nongenital gender reassignment surgery” means surgical procedures performed for the purpose of assisting an individual with a physical gender transition including, but not limited to:

(a) surgical procedures for biologically male patients, such as augmentation mammoplasty, facial feminization surgery, liposuction, lipofilling, voice feminization surgery, thyroid cartilage reduction, gluteal augmentation, hair reconstruction, or various aesthetic procedures; or

(b) surgical procedures for biologically female patients, such as subcutaneous mastectomy, voice masculinization surgery, liposuction, lipofilling, pectoral implants, or various aesthetic procedures.

(10) “Physician” means an individual who is licensed to practice medicine in this State.

(11) “Puberty-blocking drugs” means gonadotropin-releasing hormone analogues or other synthetic drugs used in biological males to stop luteinizing hormone secretion and therefore testosterone production, or synthetic drugs used in biological females that stop the production of estrogen and progesterone, when used to delay or suppress pubertal development in children for the purpose of assisting an individual with a gender transition.

(12) “Public funds” means state, county, or local governmental monies, including any such monies deposited with or derived from any department, agency, or instrumentality authorized or appropriated under state law.

Section 40-47-320. (A) A physician or other health care professional shall not provide gender transition procedures to any individual under eighteen years of age.

(B) A health care institution or entity shall not facilitate the provision of gender transition procedures to any individual under eighteen years of age.

Section 40-47-330. (A) A person or entity, including employees of other state governments, the federal government, or foreign governments, shall not knowingly engage in conduct that aids or abets the performance or inducement of gender transition procedures on any individual under eighteen years of age.

(B) The provisions of this section do not apply to any speech protected by the First Amendment of the United States Constitution.

(C) No parent of a child victim may be held liable under this section.

Section 40-47-340. (A) Public funds shall not be used, granted, paid, or distributed, directly or indirectly, to any individual, entity, or organization that provides gender transition procedures to an individual under eighteen years of age.

(B) Health care services furnished in the following situations shall not include gender transition procedures to an individual under eighteen years of age:

(1) by or in a facility owned by the State or a county or local government; or

(2) by a physician or other health care professional employed by the State or a county or local government.

(C) Any amount paid by an individual or an entity during a tax year for the provision of gender transition procedures or as premiums for health care coverage that includes coverage for gender transition procedures is not tax deductible. The South Carolina Healthy Connections program shall not reimburse or provide coverage for gender transition procedures to an individual under eighteen years of age.

Section 40-47-350. Any referral for or provision of gender transition procedures to an individual under eighteen years of age is unprofessional conduct and shall be subject to discipline by the appropriate licensing entity or disciplinary review board with competent jurisdiction in this State.

Section 40-47-360. (A)(1) Notwithstanding any other provision of law, an individual under eighteen years of age may bring an action under this article throughout the individual's minority through a parent or next friend and may bring an action under this article in the individual's own name upon reaching the age of majority at any time from that point until thirty years after reaching the age of majority.

(2) If at the time the individual abused attains the age of eighteen years he or she is under other legal disability, the limitation period under item (1) does not begin to run until the removal of the disability.

(3) The limitation period in item (1) does not run during a time period when the individual is subject to threats, intimidation, manipulation, fraudulent concealment, or fraud perpetrated by the physician or other health care professional who prescribed or otherwise provided gender transition procedures or by any person acting in the interest of the physician or other health care professional.

(B)(1) An individual may assert an actual or threatened violation of this article as a claim or defense in a judicial or administrative proceeding.

(2) The following damages may be awarded to a claimant described in this section:

(a) compensatory damages including, but not limited to, pain and suffering, loss of reputation, loss of income, and loss of consortium including, but not limited to, the loss of expectation of sharing parenthood;

(b) injunctive relief;

(c) declaratory relief;

(d) punitive damages; and

(e) any other appropriate relief.

(3) A prevailing party who establishes a violation of this article shall recover reasonable attorney's fees.

(C) Notwithstanding any other provision of law, an action under this article may be commenced, and relief may be granted, in a judicial proceeding without regard to whether the individual commencing the action has sought or exhausted available administrative remedies.

(D)(1) The Attorney General may bring an action to enforce compliance with this article.

(2) The provisions of this article shall not be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the State, or any agency, officer, or employee of the State, acting under any law other than as provided in this article, to institute or intervene in any proceeding.

SECTION 3. Article 1, Chapter 71, Title 38 of the S.C. Code is amended by adding:

Section 38-71-295. (A) For purposes of this section:

(1) “Gender transition procedure” has the same meaning given to the term in Section 40-47-310.

(2) “Health benefit plan” means a policy, contract, certificate or agreement entered into, offered or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services; except that, health benefit plan does not include any coverage pursuant to liability insurance policy, workers’ compensation insurance policy, or medical payments insurance issued as a supplement to a liability policy.

(3) “Health carrier” means an entity that provides health insurance coverage in this State and an insurance company, a health maintenance organization, and any other entity providing health insurance coverage which is licensed to engage in the business of insurance in this State and which is subject to state insurance regulation.

(B) A health carrier or health benefit plan that offers or issues health benefit plans that are delivered, issued for delivery, continued, or renewed in this State on or after the effective date of this section shall not include reimbursement for gender transition procedures for an individual under eighteen years of age.

(C) A health carrier or health benefit plan that offers or issues health benefit plans that are delivered, issued for delivery, continued, or renewed in this State on or after the effective date of this section shall not be required to provide coverage for gender transition procedures.

(D) A federal health benefit plan under an insurance policy or other plan providing health care coverage, such as TriCare or Veterans Administration health care, shall not include reimbursement for gender transition procedures for an individual under eighteen years of age in this State.

SECTION 4. This act takes effect six months after approval by the Governor.

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