



Oppose SB 304 – Don’t Interfere with a Doctor’s Ability to Provide the Most Appropriate Care

Senate Bill 304 creates an additional cause of action for medical injuries resulting from various forms of gender affirming healthcare that would drive qualified providers out of the Granite State. The bill also changes state definitions of sex and gender in a way that reduces the strength of the state’s non-discrimination laws to protect transgender individuals.

SB 304 would have a chilling effect on doctors that provide gender affirming care in New Hampshire. It also singles out transgender individuals for specific restrictions. This bill unjustly targets gender affirming care providers and is out of step with NH’s existing policies on medical malpractice claims. The liabilities in SB 304 are so severe that gender affirming care providers may, out of an abundance of caution, act against their best medical judgement to avoid the risk of litigation or stop providing care even if they want to continue providing it, because it will be harder to obtain malpractice insurance. This very scenario has already played out in several states because of hostile anti-trans legislation,ⁱ making it even more difficult for transgender individuals to access the care they need. Research has found that lack of access to gender-affirming care yields poorer mental health outcome measures in transgender youth, such as heightened suicidal ideation.ⁱⁱ

Every major medical association has endorsed gender-affirming care as safe and lifesaving.ⁱⁱⁱ According to the American College of Physicians (ACP), gender-affirming care is “supported by many prestigious medical organizations”^{iv} and there numerous studies^{v,vi} indicating gender-affirming care lowers rates of depression and suicide in transgender youth.^{vii} The ACP, among other medical associations, have “condemned”^{viii} legislation that interferes with the physician-patient relationship.^{ix} Legislators should not intervene with the medical decisions that belong to individuals and their doctors and instead listen to the medical experts: gender-affirming care saves lives.

We know that doctors are already bound by medical ethics when making decisions about how to best provide care; it is shameful to put doctors in a web of unwarranted burdens as they seek to put the health of their patients first. Specifically, SB 304 targets transgender and gender-nonconforming healthcare providers in the following ways:

- SB 304 extends the statute of limitations for this new cause of action dramatically. New Hampshire law (RSA 508:4) requires personal claims to be brought forward within 3 years of the conduct, unless the injury and its relationship to the conduct cannot reasonably be discovered. However, under this bill, that period begins once someone begins a medical detransition, which could be years later. Informed consent processes are a part of standard medical practice, and for minors seeking gender care, they must also provide consent from all parental parties along with a letter from a mental health specialist. **This legislation ignores these medical standards and builds on a presumption that a person who medically detransitions has been the victim of a mistake or has been misled by providers.** In reality, studies show regret rates are very low for this type of care among youth.^x
- The bill also reverses the burden of proof for a claim in favor of the plaintiff. Current law in New Hampshire (RSA 507-E:2) requires a claimant for medical injury to prove via expert testimony that they were injured because the provider failed to act in accordance with the standard for

reasonable professional practice, or because the doctor failed to provide adequate information to obtain informed consent. This bill reverses that process. For example, if a ‘detransitioner’ as defined in the bill, is infertile because of the treatment, then the law would presume that the doctor failed to act in accordance with the standard of care or to obtain informed consent, so the plaintiff wouldn’t need to bring in an expert to show that was true. Instead, the burden is placed on the doctor to prove by clear & convincing evidence, that they did act within the standard of care and obtain informed consent.

SB 304 also changes state definitions of sex and gender in ways that are harmful to transgender individuals and undermine existing discrimination protections. The landmark 2020 U.S. Supreme Court decision in *Bostock v. Clayton County* recognized that employers cannot discriminate against a person based on their sexual orientation or gender identity without discriminating against that person based on sex.^{xi} Moreover, since 2018, the Granite State has banned discrimination in employment, public accommodations, housing based, and schools based on gender identity (see RSA 354-A.)^{xii}

In New Hampshire, trans individuals have two separate claims of 354-A violations, discrimination based upon sex and gender. However, this bill’s proposed definition of creates space between sex and gender identity and posits sex as objective and gender identity as subjective, which is not scientific and works to the detriment of trans people. Defining sex as ‘biological sex’ and changing the definition of gender identity to exclude “assigned sex at birth” would enact a definition of sex that excludes trans people. This would limit the application of *Bostock* in New Hampshire and thus limit opportunities for transgender individuals to seek legal remedies for discrimination.

Further, the bill unjustly changes the state’s definition of gender identity to weaken what is currently in law because it deletes “appearance, or behavior” as they relate to gender. This change raises concerns that transgender individuals who choose only to socially transition and not medically transition may be less protected under New Hampshire nondiscrimination laws.

This bill is hostile and serves to alienate transgender individuals. People who are transgender need support and affirmation, not to be a political target. This legislation does nothing to help gender-diverse Granite Staters ultimately puts a vulnerable population in harm’s way. Legislation that aims to marginalize and further stigmatize our fellow Granite Staters has no place in our state.

Oppose SB 304 - Don’t Interfere with a Doctor’s Ability to Provide the Most Appropriate Care

ⁱ Cecilia Nowell, “Malpractice Insurance Prices Are Stopping Small Clinics From Offering Gender-Affirming Care to Minors” Dec 2023, Time Magazine, Found at [Malpractice Premiums Are Blocking Gender-Affirming Care for Minors | TIME](#)

ⁱⁱ Lindsey Dawson, Jennifer Kates, and Mary Beth Meusumci, *Youth Access to Gender-affirming Care: The Federal and State Policy Landscape*, June 1, 2022, Kaiser Family Foundation, available at <https://www.kff.org/other/issue-brief/youth-access-to-gender-affirming-care-the-federal-and-state-policy-landscape/>

ⁱⁱⁱ GLAAD, “Medical Association Statements in Support of Health Care for Transgender People and Youth,” June 2023, found at [Medical Association Statements in Support of Health Care for Transgender People and Youth | GLAAD](#)

^{iv} Barbara Simon, *Medical Association Statements Supporting Trans Youth Healthcare and Against Discriminatory Bills*, April 19, 2021, GLAAD, available at <https://www.glaad.org/blog/medical-association-statements-supporting-trans-youth-healthcare-and-against-discriminatory>

^vGreen, Amy E., et al. "Association of gender-affirming hormone therapy with depression, thoughts of suicide, and attempted suicide among transgender and nonbinary youth." *Journal of adolescent health* 70.4 (2022): 643-649. available at [https://www.jahonline.org/article/S1054-139X\(21\)00568-1/fulltext](https://www.jahonline.org/article/S1054-139X(21)00568-1/fulltext)

^{vi} Tordoff, Diana M., et al. "Mental health outcomes in transgender and nonbinary youths receiving gender-affirming care." JAMA network open 5.2 (2022): e220978-e220978. available at <https://pubmed.ncbi.nlm.nih.gov/35212746/>

^{vii} American College of Physicians, *Attacks on Gender-Affirming and Transgender Health Care, Nov 11, 2022*, available at <https://www.acponline.org/advocacy/state-health-policy/attacks-on-gender-affirming-and-transgender-health-care>

^{viii} American Academy of Family Physicians, American Academy of Pediatrics, American College of Obstetricians and Gynecologists, American College of Physicians, American Osteopathic Association, American Psychiatric Association, *Physicians Oppose Texas Efforts to Interfere in the Patient-Physician Relationship and Criminalize Gender-Affirming Care, Feb 28, 2022*, available at https://assets.acponline.org/acp_policy/statements/joint_statement_opposing_texas_efforts_to_interfere_in_the_patient-physician_relationship_and_criminalize_gender-affirming_care_feb_2022.pdf

^{ix} Ibid.

^x Roberts C. *Persistence of Transgender Gender Identity Among Children and Adolescents*. Pediatrics August 2022; 150 (2): e2022057693. 10.1542/peds.2022-057693 found at: [Persistence of Transgender Gender Identity Among Children and Adolescents | Pediatrics | American Academy of Pediatrics \(aap.org\)](https://aap.org/pediatrics/article/150/2/e2022057693)

^{xi} Cornell Law School, "Bostock v. Clayton County" 2020, found at <https://www.law.cornell.edu/supremecourt/text/17-1618>

^{xii} GLAD, "Discrimination: Transgender Rights in New Hampshire." found at: <https://www.glad.org/issues/discrimination-transgender-rights-new-hampshire/>