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# State Antidiscrimination Laws and Gender-Affirming Care in the Wake of the Trump Administration Executive Orders

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President Trump recently issued two executive orders (EOs) that threatened federal funding for hospitals and medical clinics that provide gender affirming care to transgender children and young adults. Two cases challenge those orders, one brought by state attorneys general<sup>i</sup> and one by PFLAG and others, supported by state Attorneys General as *amici*.<sup>ii</sup> Judges have determined the challenges are likely to succeed and **have enjoined enforcement of the orders' federal funding provisions while litigation continues.**

But since the orders were issued, a number of hospitals and clinics have ended or significantly scaled back their provision of gender-affirming care in response to the EOs' threats. Since then, 15 Democratic Attorneys General issued a statement noting that providers are also subject to state laws that protect access to gender-affirming care, which they intend to enforce.<sup>iii</sup>

In light of these statements, and the shifting federal landscape, patients and care providers may have questions about providers' obligations related to gender-affirming care under state law. This explainer<sup>1</sup> provides (1) an overview of state laws that protect transgender people's access to gender-affirming care in states where Attorneys General have weighed in and an appendix outlining those laws; and (2) context on how these state laws interact with the executive orders at issue and the basis for providers' continuing obligations under these laws.

**The explainer concludes that it is likely that in many instances, state law does require providers who have offered gender-affirming care in the past to continue to offer it, particularly where they offer the same treatments to cis-gender patients.**

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## State Laws Protecting Access to Gender-Affirming Care

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As described in the Appendix, in the states that issued the state law enforcement letter,<sup>iv</sup> brought the suit challenging the EOs,<sup>v</sup> and signed onto the *amicus* brief in *PFLAG v. Trump*,<sup>vi</sup> a number of state laws govern the rights of transgender people to receive gender-affirming care. These include:

- **Affirmative requirements** mandating that insurers cover gender-affirming care; for example, the Colorado Administrative Code provides that most insurance plans must cover “[m]edically necessary gender affirming care for gender dysphoria[.]”<sup>vii</sup> Similar statutory requirements exist in several other states. These explicit affirmative requirements generally do not apply directly to medical care providers.
- **Anti-discrimination requirements that apply explicitly to gender-affirming care coverage and provision.** For example, many states prohibit insurers from denying coverage of otherwise covered treatments based on a patient’s gender identity or the use of the treatment for gender transitioning. Rhode Island applies the same principle to medical providers, mandating that “patient[s] shall not be denied appropriate care on the basis of . . . gender identity or expression.”<sup>viii</sup> Many of these states have “shield laws” that protect providers from liability for providing gender-affirming care.<sup>ix</sup>
- **Anti-discrimination statutes that prohibit discrimination on the basis of gender identity or sex in places of public accommodation.** Massachusetts has defined insurers as places of public accommodation,<sup>x</sup> and many states define hospitals and health care providers as such. Several states have done so explicitly, and in the remaining states discussed here, no law says they are not. *See Appendix.*

Generally, outside of the emergency context medical facilities are not obligated to provide any one type of care. For example, a clinic is not required to treat prostate cancer if that treatment is outside its scope, notwithstanding the sex-connected nature of the need for such care. But **state and federal law suggests that a clinic *would* face legal risk under state public accommodations antidiscrimination laws if it had previously provided gender-affirming care and then barred its providers from offering gender-affirming care to transgender patients while providing the same treatments to other patients.** *See Appendix.*

In particular, public accommodation laws in many states would apply to the provision of healthcare services, and analogous federal litigation suggest that these laws would prohibit hospitals or clinics from withholding medically appropriate care along the lines suggested by the EOs:

### **(1) Applying Public Accommodations Law to Healthcare Services**

Public accommodations laws in general apply to both physical access to places of public accommodation and access on equal terms to the services they offer. For example, a restaurant does not satisfy its public accommodations obligations merely by admitting patrons regardless of race; it must also serve them on equal terms.<sup>xi</sup> So too with healthcare. Several cases have found that public accommodations laws require medical providers to offer services to members of protected classes on the same terms as everyone else.<sup>xii</sup>

## **(2) Application to Gender-Affirming Care**

While there are few cases interpreting state antidiscrimination laws in the context of access to gender-affirming care, similar cases brought under federal law can illuminate how courts in these states would likely understand these issues. The preliminary decisions in the two cases challenging these EOs are particularly instructive, since hospitals and clinics that cut off care in an effort to comply with the orders' restrictions are effectuating the very policies those courts have found to be unlawfully discriminatory. The courts considering both the *Washington v. Trump* and *PFLAG* cases found that the federal funding provisions of the EOs likely violate the Equal Protection Clause,<sup>xiii</sup> and the *PFLAG* court also found that they likely violate federal antidiscrimination laws applicable to healthcare.<sup>2</sup> The *Washington* and *PFLAG* courts had two primary reasons for finding that the restrictions constitute discrimination based on sex and gender identity, and both suggest that courts would interpret state antidiscrimination laws to prohibit hospitals or clinics from withholding medically appropriate care because the patient is transgender or seeks the care as part of a gender transition:

- (1) **Drawing Distinctions Explicitly Based on Sex:** In both cases, the courts held that the lines drawn by the Executive Orders in determining what types of medical services would trigger the federal funding ban were explicitly based on sex and gender identity. The prohibited services include providing puberty blockers to delay normally timed puberty only “in an individual who does not identify as his or her sex,” and prohibit hormonal and surgical treatments only if provided to “align” the appearance of an individual 18 or younger “with an identity that differs from his or her sex[.]”<sup>xiv</sup> As both courts recognized, “determining whether a particular treatment involves an individual who does not identify as his or her sex or would align an individual’s physical appearance with an identity that differs from his or her sex, ‘is impossible—literally cannot be done—without inquiring into a patient’s sex assigned at birth and comparing it to their gender identity.’”<sup>xv</sup> Both also relied on *Bostock v. Clayton County*, 590 U.S. 644, 660 (2020), to hold that the EO’s provisions discriminated based on transgender status and “it is impossible to discriminate against a person for being . . . transgender without discriminating against that individual based on sex.”<sup>xvi</sup>
  
- (2) **Relying on Gender Stereotyping:** Both courts likewise held that the orders’ care restrictions were rooted in impermissible gender stereotyping—which constitutes sex discrimination. By prohibiting treatments only if they “align an individual’s physical appearance with an identity that differs from his or her sex,” the Healthcare EO gender stereotypes, such that “a biological male can have hormone therapy and surgery to look more stereotypically male, but a biological female cannot.”<sup>xvii</sup> In other words, the provisions stem from gender stereotypes about how men or women should present, and patients are subjected to sex discrimination based on whether they “conform to the sex stereotype[s] propagated by the [Executive Order].”<sup>xviii</sup> This is sex discrimination.<sup>xix</sup>

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<sup>2</sup> The court held that the executive orders were *ultra vires* because they conflict with existing federal statutes prohibiting discrimination on the basis of sex, specifically, Section 1557 of the Affordable Care Act, 42 U.S.C § 18116, and Section 1908 of the Public Health Service Act, 42 U.S.C. § 300w-7. *PFLAG*, 2025 WL510050, at \*18-20. The plaintiff states in *Washington v. Trump* did not bring analogous statutory claims.

Although those cases challenge the EO’s attempts to block funding for providers, rather than the choices of the hospitals and clinics, similar claims could be brought against the latter and similar reasoning would apply.<sup>3</sup>

Finally, although this memo focuses on risks arising under *state* antidiscrimination statutes, it is worth noting that in evaluating the plaintiffs’ statutory claims the court in PFLAG explicitly noted that hospitals that stopped providing care in response to the executive orders would, in doing so, violate *federal* antidiscrimination law.<sup>xx</sup> As the court stated:

Plaintiffs accurately note that the Executive Orders foist upon hospitals receiving federal funds an impossible choice: (1) keep providing medical care to transgender patients under the age of nineteen in compliance with the anti discrimination statutes and risk losing federal funding under the Executive Orders, or (2) stop providing care on the basis of trans gender identity in violation of the statutes, but in compliance with the EOs.<sup>xxi</sup>

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## Interaction with the Executive Orders

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The state laws discussed above and included in the Appendix reflect the considered judgments of these states’ legislatures that it is necessary to protect transgender residents from discrimination across a range of contexts—including by protecting their ability to receive appropriate healthcare services such as gender-affirming care. Under President Biden, the executive branch of the federal government agreed, for example, arguing at the Supreme Court on behalf of plaintiffs challenging discriminatory legislation in Tennessee and Kentucky that bars trans youth from obtaining gender-affirming care.<sup>xxii</sup>

Today, of course, the Trump administration is virulently opposed.<sup>4</sup> Now, healthcare providers in states with protective laws are in a situation where the state is telling them not to discriminate, while the federal government is suggesting they do exactly that. Healthcare providers who work with transgender patients may wonder what effect the current Administration’s statements and executive orders have on state laws that prohibit discrimination against transgender people. The answer is, likely none.

Generally speaking, federal law prevails over, or “preempts,” state law when there is a conflict between the two under the Supremacy Clause of the United States Constitution. The Supremacy Clause provides, “the Laws of the United States . . . shall be the supreme Law of the Land . . . , any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”<sup>xxiii</sup> To know whether a federal action preempts state law, then, we need to know whether the federal action constitutes “the Law[] of the United States.” If it does, then state laws “to the Contrary” are preempted. If it does not, it cannot have preemptive effect.

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<sup>3</sup> Although constitutional claims are not available against private entities, the reasoning is nevertheless instructive. Courts that have found gender-affirming care bans to violate Equal Protection have largely also found them to violate statutory prohibitions on sex discrimination. See *generally, e.g., Kadel v. Folwell*, 100 F.4th 122 (4th Cir. 2024); *Flack v. Wisconsin Dep’t of Health Servs.*, 395 F. Supp. 3d 1001, 1014-1015, 1019-1022 (W.D. Wis. 2019).

<sup>4</sup> Although the Trump administration has since withdrawn the Department of Justice’s opposition to the challenged law in *Skrmetti*, it did not request dismissal of the case. See Letter of Petitioner, *Skrmetti*, 144 S.Ct. 2679 (Feb. 7, 2024) (No. 23-477).

For a federal action to count as “the Law of the United States,” it must be a valid exercise of power granted by the Constitution. For example, a law passed by Congress that exceeds the authority given to Congress by the Constitution, or a regulation promulgated by an agency that goes beyond the authority delegated to it by Congress, is not a valid exercise of power and thus cannot have any preemptive effect on state law.<sup>xxiv</sup>

Similarly, an executive action taken by the President can preempt state law only if it has the force of law and was taken pursuant to valid Presidential powers, which “must stem either from an act of Congress or from the Constitution itself.”<sup>xxv</sup> Although some executive orders and analogous executive actions have been found to preempt conflicting state law, this has occurred only in areas where the President has been granted independent authority to act by either the Constitution or Congress.<sup>xxvi</sup> The federal funding provisions of the Trump Administration’s Executive Orders relating to gender identity and gender-affirming care do not represent any such exercise of independent authority lawfully granted to the President by the Constitution or delegated to him by Congress—as both courts that have considered them have found.<sup>xxvii</sup> As a result, they should not have any preemptive effect on state antidiscrimination law.

Furthermore, even if the provisions at issue were within the authority of the President to enact, they could not have preemptive power if they do not have the force of law, as is the case here for two reasons. First, they cannot preempt state law if they are otherwise unconstitutional or contrary to existing federal statutes, as the courts that have preliminarily considered them have concluded they are.<sup>xxviii</sup> And second, executive orders generally cannot preempt state law when they are “mere expressions of executive will” directing the actions of others rather than having their own independent legal effect.<sup>xxix</sup> As the Maryland Attorney General has pointed out, “[t]he Executive Order[s] [are] directive[s] to the agencies, not to states or individuals. Until the agencies implement the order, there is no federal prohibition on gender affirming care.”<sup>xxx</sup> While certain agencies have issued statements regarding their intent to implement the order, none have actually done so to date.<sup>xxxi</sup>

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## Appendix: State Laws Protecting Access to Gender-Affirming Care

State	Relevant Law	Effect	Category
California	Unruh Civil Rights Act - Cal. Civ. Code §§ 51(b), (e)(6)	Prohibits “business establishments of every kind whatsoever” from discriminating based on gender identity or expression. <sup>1</sup>	General antidiscrimination provision
	Cal. Ins. Code § 11589.1	Prohibits professional liability insurers from taking adverse action against a provider for gender-affirming care.	Prof. liability insurance coverage
	Cal. Code Regs. tit. 10 § 2561.2 (a)	Prohibits health insurance discrimination on the basis of gender identity, including gender-affirming care.	Health insurance coverage (antidiscrimination)
Colorado	Colorado Antidiscrimination Act (CADA) - Colo. Rev. Stat. § 24-34-601	Prohibits public accommodations discrimination on the basis of gender identity or expression. <sup>2</sup>	General antidiscrimination provision
	Colo. Rev. Stat. § 10-16-121(1)(f)	Prohibits health insurance carriers from taking adverse action against a provider for gender-affirming care.	Health insurance coverage (payment to doctors)
	3 Colo. Code Regs. § 702-4:4-2-42, Section 5(A)(1)(o)	Affirmatively requires healthcare plans to cover gender-affirming care.	Health insurance coverage (affirmatively requires)
	Colo. Rev. Stat. §§ 10-4-109.6(1)	Prohibits medical malpractice insurer from taking adverse action against a healthcare professional for gender-affirming care.	Prof. liability insurance coverage
Connecticut	Conn. Gen. Stat. § 46a-64	Prohibits discrimination in public accommodations based on gender identity. <sup>3</sup>	General antidiscrimination provision
	Bulletin IC-34 “Gender Identity Non-Discrimination Requirements”, Conn. Ins. Dep’t (Dec. 19, 2013)	Interprets state antidiscrimination provisions broadly to include protections and affirmative requirements for covering gender-affirming care, <i>see statutes below</i> . Also affirmatively requires all entities licensed by the Insurance Department to affirmatively review and change policies to include gender-affirming care.	Health insurance coverage (affirmatively requires & antidiscrimination)

<sup>1</sup> Although the statute does not explicitly define “business establishments,” California courts have interpreted the provision to apply to hospitals, particularly when they deny gender-affirming care while offering similar treatments for other medical purposes. *See Minton v. Dignity Health*, 252 Cal. Rptr. 3d 616 (Cal. Ct. App. 2019), *cert denied* 142 S.Ct. 455 (2021) (holding that plaintiff, a transgender male, properly brought a claim for discrimination against a hospital under Cal. Civil Code § 51(b) due to its refusal to perform a hysterectomy because of gender identity, despite performing hysterectomies as treatment for other conditions).

<sup>2</sup> A place of public accommodations includes an “establishment conducted to serve the health, appearance, or physical condition of a person.” Colo. Rev. Stat. § 24-34-601(1).

<sup>3</sup> Although not specifically including “hospital” as a place of public accommodations, hospitals are likely covered. *See, e.g., Garcia v. Yale New Haven Hosp.*, No. CV 135034465S, 2013 WL 5396435, at \*2 (Conn. Super. Ct. Sept. 5, 2013) (“The defendant hospital in the present case would fall under [the] definition” for public accommodations in General Statutes § 46a-64(a)).

State	Relevant Law	Effect	Category
	Conn. Gen. Stat. §§ 38a-488a, 38a-514, 38a-469 & Bulletin IC-34	Requires health insurance to include coverage for gender dysphoria and associated gender-affirming care under mental health coverage and other general categories of required coverage.	Health insurance coverage (affirmatively requires & antidiscrimination)
	Conn. Gen. Stat. § 38a-816(6) & Bulletin IC-34	Refusal by an insurer to pay for medically necessary treatment of gender dysphoria is an unfair claim settlement practice.	Health insurance coverage (penalty for no coverage)
	Conn. Comm'n on Hum. Rts. & Opportunities, <i>Declaratory Ruling on Petition Regarding Health Insurers' Categorization of Certain Gender-Confirming Procedures as Cosmetic</i> (Apr. 17, 2020)	Prohibits all employers and insurers from denying coverage for any treatments related to gender-affirming care; and affirmatively requires medically necessary gender-affirming care be provided.	Health insurance coverage; general antidiscrimination provision
Delaware	Del. Code tit. 6, § 4504	Prohibits discrimination based on gender identity or expression in public accommodations. <sup>4</sup>	General antidiscrimination provision
	Del. Code tit. 18, § 2304(22)	Prohibits health insurers from discriminating against someone based on gender identity "in any way".	Health insurance coverage (antidiscrimination)
District of Columbia	D.C. Code § 2-1402.31	Prohibits discrimination in public accommodations on the basis of gender identity. <sup>5</sup>	General antidiscrimination provision
	D.C. Code § 31-2231.11	Prohibits discrimination in health insurance on the basis of gender identity.	Health insurance coverage (antidiscrimination)
Hawaii	Haw. Rev. Stat. §§ 368-1, 489-3	Prohibits discrimination in public accommodations, or any services receiving state financial assistance, on the basis of gender identity. <sup>6</sup>	General antidiscrimination provision
	Haw. Rev. Stat. §§ 431:10A-118.3, 432:1-607.3, 432D-26.3	Prohibits health insurance companies from discriminating based on gender identity and prohibits designating gender-affirming care as "cosmetic."	Health insurance coverage (antidiscrimination)

<sup>4</sup> Although hospitals are not explicitly defined as a place of public accommodation, the Delaware Division of Human & Civil Rights indicates that hospitals are a place of public accommodation under the state statute. See Del. Div. Hum. & Civ. Rts., *Enforcement*, <https://humanandcivilrights.delaware.gov/enforcement-education/> (last visited Mar. 6, 2025).

<sup>5</sup> Explicitly includes "hospitals" as a place of public accommodation. See D.C. Code § 2-1401.02(24).

<sup>6</sup> Explicitly includes "clinic, hospital" as a public accommodation. Haw. Rev. Stat. § 489-2(9).

State	Relevant Law	Effect	Category
Illinois	775 Ill. Comp. Stat. 5/1-102(A), 5/1-103(O-1), 5/1-103(Q)	Prohibits discrimination, including in public accommodations, based on gender identity. <sup>7</sup>	General antidiscrimination provision
	215 Ill. Comp. Stat. 5/356z.60(b); 89 Ill. Adm. Code 140.440(h)	State Medicaid and other health insurers in Illinois are required to cover hormone therapy medications for treating gender dysphoria.	Health insurance coverage (affirmatively requires)
	50 Ill. Adm. Code §§ 2603.30, 2603.35	Prohibits health insurance companies from discriminating based on gender identity in care coverage.	Health insurance coverage (antidiscrimination)
Maine	Me. Rev. Stat. tit. 5, §§ 4552, 4553	Generally prohibits discrimination against individuals based on gender identity, including in public accommodations. <sup>8</sup>	General antidiscrimination provision
	Me. Rev. Stat. tit. 22, § 3174-MMM	State Medicaid program affirmatively requires coverage of gender-affirming care.	Health insurance coverage (affirmatively requires)
Maryland	Md. Code Ann., Health-Gen. § 19-355	Prohibits hospitals from discriminating against individuals in the provision of healthcare based on gender identity.	Healthcare antidiscrimination provision
	Md. Code Ann., Health-Gen. § 15-151	State Medicaid program required to provide coverage for gender-affirming treatment and to do so in a non-discriminatory manner.	Health insurance coverage (antidiscrimination; affirmatively requires)
	Md. Code Ann., Ins. § 15-1A-22	Prohibits discrimination in insurance coverage on the basis of gender identity, sexual orientation, and sex.	Health insurance coverage (antidiscrimination)
Massachusetts	Mass. Gen. Laws ch. 272, §§ 92A, 98	Prohibits discrimination in places of public accommodation; <sup>9</sup> Mass. Comm. Against Discrim., Gender Identity Guidance, 4 (Dec. 5, 2016), clarifies that public accommodation includes insurance companies.	General antidiscrimination provision; health insurance coverage (antidiscrimination)
	Commonwealth of Massachusetts Board of Registration in Medicine – Policy on Gender Identity and the Physician Profile Program	Board of Registration in Medicine prohibits discrimination on basis of gender, sexual orientation, or gender identity.	Professional Requirements
	244 Code Mass. Reg. § 9.03	Nurses licensed by Board cannot discriminate on the basis of sex, sexual orientation, gender identity, or gender expression.	Professional Requirements

<sup>7</sup> Defines public accommodations as inclusive of “insurance office, professional office of a healthcare provider, hospital or other service establishment.” 775 Ill. Comp. Stat. 5/5-101(A)(6).

<sup>8</sup> Defines public accommodations as inclusive of “insurance office, professional office of a healthcare provider, hospital, . . . , clinic, . . . or other service establishment.” Me. Rev. Stat. tit. 5 § 4553(F).

<sup>9</sup> A place of public accommodation is defined to include, “a hospital, . . . or clinic operating for profit.” Mass. Gen. Laws ch. 272, §§ 92A, 98.



State	Relevant Law	Effect	Category
	Comm. of Mass. Office of Consumer Affairs and Business Regulation, Division of Insurance Bulletin 2021-11	Clarifies that insurance providers may not discriminate on the basis of gender identity or gender dysphoria and must cover gender-affirming care in the same manner they cover other care.	Health insurance coverage (antidiscrimination)
Nevada	Nev. Stat. 651.070	Prohibits discrimination on the bases of gender identity or expression, including in places of public accommodation. <sup>10</sup>	General antidiscrimination provision
	Nev. Stat. 695B.1915	Requires insurers to cover gender-affirming care.	Health insurance coverage (affirmatively requires)
New Jersey	N.J. Stat. Ann. §§ 10:5-1 <i>et seq.</i> (NJ Law Against Discrimination)	Prohibits discrimination on the basis of gender identity or expression, including in public accommodations. <sup>11</sup>	General antidiscrimination provision
	N.J. Stat. Ann. §§ 17B:27A-7.22; 17B:27A-19.26; 17:48-600; 17:48A-7II; 17:48E-35.39; 30:4D-9.1; 30:7E-7; 26:2J-4.40; 52:14-17.29x; 52:14-17.46.6i	Insurance companies cannot deny benefits coverage to person because of gender identity or expression.	Health insurance coverage (antidiscrimination)
New York	New York Human Rights law (NYHRL) - N.Y. Exec. Law §§ 296, 296-a, 296-b; N.Y. Civil Rights Law § 40-c	Prohibits discrimination on the basis of gender identity, including in public accommodations. <sup>12</sup>	General antidiscrimination provision
	N.Y. Comp. Codes R. & Regs. tit. 9, § 466.13	NYHRL implementing regulation – discrimination on the basis of gender dysphoria or gender identity prohibited.	General antidiscrimination provision
	Insurance Law § 2607, as amended by Subpart D of Part J of Chapter 57 of the Laws of 2019	Health insurance plans cannot discriminate on the basis of gender identity.	Health insurance coverage (antidiscrimination)

<sup>10</sup> Explicitly defines a place of public accommodation to include “pharmacy, insurance office, office of a provider of health care, hospital or other service establishment.” Nev. Stat. 651.050(4)(g).

<sup>11</sup> Explicitly defines a place of public accommodation to include “clinic, or hospital.” N.J. Stat. Ann. § 10:5-5.

<sup>12</sup> NYHRL defines a place of public accommodation to include “clinics, hospitals.” N.Y. Exec. Law § 292.

State	Relevant Law	Effect	Category
Oregon	Or. Rev. Stat. §§ 659A.006, 659A.403	Prohibits discrimination against individuals based on gender identity, including in public accommodations. <sup>13</sup>	General antidiscrimination provision
	Or. Rev. Stat. §§ 414.769,	Oregon Medicaid program affirmatively requires providing gender-affirming care and prohibits denial as a cosmetic service.	Health insurance coverage (affirmatively requires)
	Or. Admin. R. §§ 836-053-0441, 743A.325	Affirmatively requires healthcare plans and “carriers” (i.e., insurance companies, healthcare service contractor, HMOs, employers, etc.) in Oregon to provide gender-affirming care and includes protections for denial of medically necessary care as cosmetic or otherwise.	Health insurance coverage (affirmatively requires)
	Or. Rev. Stat. § 676.313	Prohibits malpractice insurance for healthcare providers from taking adverse action against a provider for providing lawful gender-affirming healthcare services.	Prof. liability insurance
Rhode Island	R.I. Gen. Laws § 11-24-2; 2.3	Prohibits discrimination on the basis of gender identity in public accommodations. <sup>14</sup>	General antidiscrimination provision
	R.I. Gen. Laws § 23-17-19.1	Prohibits discrimination on the basis of gender identity in healthcare facilities.	Healthcare antidiscrimination provision
	Gender Dysphoria/Gender Nonconformity Coverage Guidelines <sup>15</sup>	Requires most health plans (all except Medicare and self-funded employer plans) to cover a broad range of gender-affirming care.	Health insurance coverage (affirmatively requires)
Vermont	Vt. Stat. Ann. tit. 9, § 4502	Prohibits discrimination on basis of gender identity in places of public accommodations. <sup>16</sup>	General antidiscrimination provision
	8 V.S.A. § 4724; State of Vermont Department of Financial Regulation, Insurance Bulletin 174	Prohibits insurance providers from discriminating on the basis of gender identity.	Health insurance coverage (antidiscrimination)

<sup>13</sup> Explicitly defines a place of public accommodation to include “state hospitals”, Or. Rev. Stat. § 659A.400(2)(b), although not private hospitals or clinics. However, the Oregon Supreme Court has found that a private healthcare company providing services at a jail constitutes as a place of public accommodation because the health clinic is clearly a “place or service” providing “services” and the jail population can be considered the public. *See Abraham v. Corizon Health, Inc.*, 511 P.3d 1083, 1097 (Or. 2022) (citing Or. Rev. Stat. § 659A.400(1)(a)).

<sup>14</sup> Defines places of public accommodation to include “clinics, hospitals.” R.I. Gen. Laws § 11-24-3.

<sup>15</sup> Health & Hum. Servs. State of R.I., Gender Dysphoria/Gender Nonconformity Coverage Guidelines (Oct. 28, 2025), [https://eohhs.ri.gov/sites/g/files/xkgbur226/files/Portals/0/Uploads/Documents/MA-Providers/MA-Reference-Guides/Physician/gender\\_dysphoria.pdf](https://eohhs.ri.gov/sites/g/files/xkgbur226/files/Portals/0/Uploads/Documents/MA-Providers/MA-Reference-Guides/Physician/gender_dysphoria.pdf).

<sup>16</sup> The State of Vermont Human Rights Commission interprets public accommodations to include hospitals. *See Places of Accommodation*, <https://hrc.vermont.gov/places-public-accommodation> (last visited Mar. 6, 2025). The Supreme Court of Vermont has held that government entities are places of public accommodation and has endorsed, although not held, that places of public accommodations are likely to include hospitals. *See Dep’t of Corr. v. Hum. Rts. Comm’n*, 917 A.2d 451, 458 n.2 (Vt. 2006).

State	Relevant Law	Effect	Category
Washington	Wash. Rev. Code §§ 49.60.030(1), 49.60.040(2), 49.60.040(29), 40.60.215	Prohibits discrimination against individuals based on gender identity, including in public accommodations. <sup>17, 18</sup> Includes specific right to “engage in insurance transactions or transactions with” HMOs without discrimination.	General antidiscrimination provision
	Wash. Rev. Code. §§ 48.43.0128, 74.09.675  Wash. Reg. 21-20-110 (Oct. 4, 2021)	Affirmatively requires health insurance plans (and state Medicaid) to cover (and not limit) gender-affirming treatment.  Implemented further by rulemaking to remove perceived loopholes that limited coverage for gender-affirming treatment.	Health insurance coverage (affirmatively requires)
Wisconsin	Wis. Stat. Ann. § 106.52	Prohibits discrimination based on sex in places of public accommodation. <sup>19</sup> Some cities also include protections based on gender identity.	General antidiscrimination provision

<sup>17</sup> Public accommodations include hospitals and healthcare clinics. *See Trueblood v. Valley Cities Couns. & Consultation*, --- F. Supp. 3d ---, 2024 WL 3965926, at \*14 n.9 (W.D. Wash. Aug. 28, 2024) (Defendant healthcare clinic “is a place of public accommodation because it offers healthcare and medical services to the public.”) (citing RCW 49.60.040(2)); *see also Floeting v. Grp. Health Coop.*, 434 P.3d 39, 40 (Wash. 2019) (“[A] nonprofit healthcare system ... is a place of public accommodation.”).

<sup>18</sup> *See also Trueblood*, --- F. Supp. 3d ---, 2024 WL 3965926, at \*14 (allowing a healthcare clinic to terminate an employee for refusing to use preferred pronouns because not doing so would “treat transgender individuals differently, and disadvantageously, on the basis of gender identity—that is discrimination, point blank.”).

<sup>19</sup> Defines places of public accommodation to include “clinics; hospitals.” Wis. Stat. Ann. § 106.52(1)(e).

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## End Notes

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<sup>i</sup> The four plaintiff states are Washington, Oregon, Colorado, and Minnesota. See Complaint, *Washington v. Trump*, --- F. Supp. 3d ---, No. 25-cv-00244, 2025 WL 659057 (W.D. Wa. Feb. 7, 2025).

<sup>ii</sup> See Complaint, *PFLAG, Inc. v. Trump*, --- F. Supp. 3d ---, No. 25-337, 2025 WL 510050 (D. Md. Feb. 4, 2025); Amicus Brief of Massachusetts, California, Maryland, Colorado, Connecticut, Delaware, Hawai'i, Illinois, Maine, Minnesota, Nevada, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington, & the District of Columbia as *Amici Curiae* in Support of Plaintiffs' Motion for Preliminary Injunction, *PFLAG, Inc. v. Trump*, --- F. Supp. 3d ---, No. 25-337, 2025 WL 685124 (D. Md. Feb. 21, 2025) ("*PFLAG State AG Amicus Brief*").

<sup>iii</sup> See e.g., Wis. Dep't of Just., *Attorney General Kaul and Coalition Issue Joint Statement on Protecting Access to Gender-Affirming Care* (Feb. 5, 2025), <https://www.doj.state.wi.us/news-releases/attorney-general-kaul-and-coalition-issue-joint-statement-protecting-access-gender> (statement of 15 state Attorneys General).

<sup>iv</sup> The letter signatories were California, Colorado, Connecticut, Delaware, Hawai'i, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, Nevada, Rhode Island, Vermont, and Wisconsin.

<sup>v</sup> As noted above, the plaintiffs were Colorado, Minnesota, Oregon, and Washington.

<sup>vi</sup> The amici were California, Colorado, Connecticut, Delaware, District of Columbia, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington.

<sup>vii</sup> 3 Colo. Code Regs. § 702-4:4-2-42, Section 5(A)(1)(o).

<sup>viii</sup> R.I. Gen. Laws § 23-17-19.1.

<sup>ix</sup> See, e.g., *PFLAG State AG Amicus Brief*, at 4-5, n.5. Because these "shield laws" would not apply to the funding concerns at the heart of this explainer, we do not discuss them or include them in the Appendix here.

<sup>x</sup> See Mass. Comm. Against Discrim., *Gender Identity Guidance 4* (Dec. 5, 2016).

<sup>xi</sup> See, e.g., *Laroché v. Denny's, Inc.*, 62 F. Supp. 2d 1375 (S.D. Fla. 1999) (violation of public accommodations law where restaurant seated group of white and Black patrons but would not serve them food).

<sup>xii</sup> See, e.g., *Cahill v. Rosa*, 674 N.E.2d 274 (N.Y. 1996) (dentists violated NY law by refusing to provide dental services to people with known or suspected HIV); *Fiske v. Rooney*, 663 N.E.2d 1014 (Ohio Ct. App. 1995) (surgeon violated Ohio law by refusing to treat a patient for appendicitis when he learned he was HIV positive); *D.B. v. Bloom*, 896 F. Supp. 166 (D.N.J. 1995) (dentist violated NJ law by refusing to provide dental services to a person with HIV).

<sup>xiii</sup> See *PFLAG, Inc. v. Trump*, No. 25-337, 2025 WL 510050, at \*21 (D. Md. Feb. 14, 2025); *Washington v. Trump*, No. 25-cv-00244, 2025 WL 659057, at \*15, \*24 (W.D. Wash. Feb. 28, 2025).

<sup>xiv</sup> 90 Fed. Reg. at 8771.

<sup>xv</sup> *Washington*, 2025 WL 659057, at \*17 (quoting *Kadel*, 100 F.4th 122, 147 (4th Cir. 2024)); see also *PFLAG, Inc. v. Trump*, No. 25-337, 2025 WL 685124, at \*23 (D. Md. Mar. 4, 2025) (noting that order is "'textbook sex discrimination' under *Kadel* because ... the Court can determine whether some patients will be eliminated from candidacy for these surgeries or other courses of treatment solely from knowing their sex assigned at birth[.]" (quoting *Kadel*, 100 F.4th at 153) (cleaned up)).

<sup>xvi</sup> *PFLAG*, 2025 WL 510050, at \*18 (quoting *Bostock*, 590 U.S. at 660).

<sup>xvii</sup> *Washington*, 2025 WL 659057, at \*16.

<sup>xviii</sup> *Id.* at \*17 (quoting *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 608 (4th Cir. 2020)); see also *PFLAG*, 2025 WL 685124, at \*23 (quoting *Kadel*, 100 F.4th at 153).

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<sup>xix</sup> See *PFLAG*, 2025 WL 685124, at \*22-23 (collecting cases).

<sup>xx</sup> In reference to the plaintiffs' claims related to Section 1557 of the Affordable Care Act, 42 U.S.C § 18116, and Section 1908 of the Public Health Service Act, 42 U.S.C. § 300w-7.

<sup>xxi</sup> *PFLAG*, 2025 WL 685124, at \*24 (Memo. Op. Prelim. Inj.).

<sup>xxii</sup> Brief for Petitioner, *United States v. Skrmetti*, cert. granted, 144 S.Ct. 2679 (June 24, 2024) (No. 23-477).

<sup>xxiii</sup> U.S. Const. art. VI, cl. 2.

<sup>xxiv</sup> *City of New York v. F.C.C.*, 486 U.S. 57, 63 (1988); *Merck Sharp & Dohme Corp. v. Albrecht*, 587 U.S. 299, 315 (2019).

<sup>xxv</sup> *Bldg. & Const. Trades Dep't, AFL-CIO v. Allbaugh*, 295 F.3d 28, 32 (D.C. Cir. 2002) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952)); see also *Kentucky v. Biden*, 57 F.4th 545, 547 (6th Cir. 2023).

<sup>xxvi</sup> See *Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396, 413 (2003); *Old Dominion Branch No. 496 v. Austin*, 418 U.S. 264, 273 (1974); *BNSF Ry. Co. v. Swanson*, No. CV-23-43, 2024 WL 5245233, at \*5 (D. Mont. Dec. 30, 2024); see also *Hayslett v. Tyson Foods, Inc.*, No. 1:22-CV-1123, 2023 WL 3666091 at \*5-6 (W.D. Tenn. May 25, 2023).

<sup>xxvii</sup> See *PFLAG*, 2025 WL 510050, at \*1, 13-15; *Washington*, 2025 WL 659057, \*12.

<sup>xxviii</sup> *Washington*, 2025 WL 659057, \*12-24; *PFLAG*, 2025 WL 510050, at \*18-21.

<sup>xxix</sup> *In re Nat'l Sec. Agency Telecomms. Recs. Litig.*, 633 F. Supp. 2d 892, 908 (N.D. Cal. 2007) (holding that executive orders preempt state law only when they "are necessary as a means of carrying out federal laws"). But see *BNSF Ry. Co.*, 2024 WL 5245233, at \*5.

<sup>xxx</sup> Md. Off. Att'y Gen., Guidance Memorandum: Guidance to the LGBTQIA+ Community Concerning Protections Under Maryland Law 3-4 (Feb. 2025),

[https://www.marylandattorneygeneral.gov/News%20Documents/2025\\_LGBTQI+\\_Guidance\\_Memorandum.pdf](https://www.marylandattorneygeneral.gov/News%20Documents/2025_LGBTQI+_Guidance_Memorandum.pdf).

<sup>xxxi</sup> Ctrs. for Medicare & Medicaid Servs. Ctr. for Clinical Standards & Quality, *Quality & Safety Special Alert Memo: Protecting Children from Chemical and Surgical Mutilation* (Mar. 5, 2025),

<https://www.cms.gov/files/document/qssam-25-02-hospitals.pdf>; Health Res. & Servs. Admin., *Letter to Hospital Administrators, Colleagues, and Grant Recipients* (Mar. 6, 2025),

<https://www.hrsa.gov/sites/default/files/hrsa/grants/march-2025-letter-hospital-admins-grantees.pdf>.