

SECOND REGULAR SESSION

HOUSE BILL NO. 2399

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE POLLOCK (123).

3961H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 516.105 and 630.115, RSMo, and to enact in lieu thereof three new sections relating to gender dysphoria or incongruence.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 516.105 and 630.115, RSMo, are repealed and three new sections
2 enacted in lieu thereof, to be known as sections 516.105, 630.007, and 630.115, to read as
3 follows:

516.105. 1. All actions against physicians, hospitals, dentists, registered or licensed
2 practical nurses, optometrists, podiatrists, pharmacists, chiropractors, professional physical
3 therapists, mental health professionals licensed under chapter 337, and any other entity
4 providing health care services and all employees of any of the foregoing acting in the course
5 and scope of their employment, for damages for malpractice, negligence, error or mistake
6 related to health care shall be brought within two years from the date of occurrence of the act
7 of neglect complained of, except that:

8 (1) In cases in which the act of neglect complained of is introducing and negligently
9 permitting any foreign object to remain within the body of a living person, the action shall be
10 brought within two years from the date of the discovery of such alleged negligence, or from
11 the date on which the patient in the exercise of ordinary care should have discovered such
12 alleged negligence, whichever date first occurs; and

13 (2) In cases in which the act of neglect complained of is the negligent failure to
14 inform the patient of the results of medical tests, the action for failure to inform shall be
15 brought within two years from the date of the discovery of such alleged negligent failure to
16 inform, or from the date on which the patient in the exercise of ordinary care should have

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 discovered such alleged negligent failure to inform, whichever date first occurs; except that,
18 no such action shall be brought for any negligent failure to inform about the results of medical
19 tests performed more than two years before August 28, 1999. For purposes of this
20 subdivision, the act of neglect based on the negligent failure to inform the patient of the
21 results of medical tests shall not include the act of informing the patient of the results of
22 negligently performed medical tests or the act of informing the patient of erroneous test
23 results; and

24 **(3) In cases in which the act of neglect complained of relates to harms caused by**
25 **the medicalization of gender dysphoria or incongruence, the person bringing the action**
26 **shall have two years from his or her twenty-sixth birthday to bring such action.**
27 **Negligence in such cases shall include any failure to thoroughly explore differential**
28 **diagnoses to rule out relevant comorbid conditions including, but not limited to, autism**
29 **spectrum disorder, attention deficit hyperactivity disorder, obsessive compulsive**
30 **disorder, anxiety, depression, borderline personality disorder, or a history of physical**
31 **or sexual trauma before initiating medical treatment and any failure to verify treatment**
32 **of such conditions before initiating medical treatment. In no event shall any action for**
33 **damages for an act of neglect described in this subdivision be brought by a person after**
34 **his or her twenty-eighth birthday; and**

35 ~~(3)~~ **(4) In cases in which the act of neglect complained of relates to any form of**
36 **harm other than that described in subdivision (3) of this subsection and the person**
37 **bringing the action is a minor less than eighteen years of age at the time of the alleged**
38 **negligence, such minor shall have until his or her twentieth birthday to bring such action.**

39

40 In no event shall any action for damages for malpractice, error, or mistake, **other than an**
41 **action for damages described in subdivision (3) of this subsection**, be commenced after
42 the expiration of ten years from the date of the act of neglect complained of or for two years
43 from a minor's eighteenth birthday, whichever is later.

44 2. Any service on a defendant by a plaintiff after the statute of limitations set forth in
45 subsection 1 of this section has expired or after the expiration of any extension of the time
46 provided to commence an action pursuant to law shall be made within one hundred eighty
47 days of the filing of the petition. If such service is not made on a defendant within one
48 hundred eighty days of the filing of the petition, the court shall dismiss the action against the
49 defendant. The dismissal shall be without prejudice unless the plaintiff has previously taken
50 or suffered a nonsuit, in which case the dismissal shall be with prejudice.

630.007. As used in this chapter, the term "informed consent", when applied to
2 **consent to medicalized treatments for gender dysphoria or incongruence, shall mean**
3 **consent given only after the practitioner's thorough presentation and explanation of:**

4 **(1) A current summary of the state of the research in this area, including links to**
5 **studies or websites that impartially explain the scientific evidence regarding the**
6 **potential risks and benefits of pursuing a hormonal or surgical approach as compared**
7 **to a psychiatric or therapeutic approach, as well as a GRADE (Grading of**
8 **Recommendations, Assessment, Development, and Evaluation) rating of the quality of**
9 **the evidence cited;**

10 **(2) A link to the most recent available studies on detransitioners, individuals who**
11 **sought medical treatment for gender dysphoria or incongruence and later regretted**
12 **doing so, that includes information on common reasons cited for both the original**
13 **transition and the detransition; and**

14 **(3) Up-to-date information on the satisfaction rates of the facility proposing to**
15 **provide the treatment, stratified by type of treatment and patient demographics and**
16 **including the lost to follow-up rate corresponding to each data point. Satisfaction rates**
17 **shall be obtained and provided for individuals one year posttreatment, two years**
18 **posttreatment, five years posttreatment, and ten years posttreatment. If a data point is**
19 **missing, the facility shall note a lost to follow-up rate of one hundred percent. The**
20 **facility shall clearly define the term "satisfaction".**

630.115. 1. Each patient, resident or client shall be entitled to the following without
2 limitation:

3 (1) To humane care and treatment;

4 (2) To the extent that the facilities, equipment and personnel are available, to medical
5 care and treatment in accordance with the highest standards accepted in medical practice;

6 (3) To safe and sanitary housing;

7 (4) To not participate in nontherapeutic labor;

8 (5) To attend or not attend religious services;

9 (6) To receive prompt evaluation and care, treatment, habilitation or rehabilitation
10 about which he **or she** is informed insofar as he **or she** is capable of understanding;

11 (7) To be treated with dignity as a human being;

12 (8) To not be the subject of experimental research without his **or her** prior written and
13 informed consent or that of his **or her** parent, if a minor, or his **or her** guardian; except that
14 no involuntary patient shall be subject to experimental research, except as provided within
15 this chapter;

16 (9) To decide not to participate or may withdraw from any research at any time for
17 any reason;

18 (10) To have access to consultation with a private physician at his **or her** own
19 expense;

20 (11) To be evaluated, treated or habilitated in the least restrictive environment;

21 (12) To not be subjected to any hazardous treatment or surgical procedure unless he
22 **or she**, his **or her** parent, if he **or she** is a minor, or his **or her** guardian [~~eonsents~~] **provides**
23 **informed consent**; or unless such treatment or surgical procedure is ordered by a court of
24 competent jurisdiction;

25 (13) In the case of hazardous treatment or irreversible surgical procedures, to have,
26 upon request, an impartial review prior to implementation, except in case of emergency
27 procedures required for the preservation of his **or her** life;

28 (14) To a nourishing, well-balanced and varied diet;

29 (15) To be free from verbal and physical abuse.

30 2. Notwithstanding any other sections of this chapter, each patient, resident or client
31 shall have the right to an impartial administrative review of alleged violations of the rights
32 assured under this chapter. The impartial administration review process shall be a mechanism
33 for:

34 (1) Reporting alleged violations of rights assured under this chapter;

35 (2) Investigating alleged violations of these rights;

36 (3) Presenting patient, resident or client grievances on the record to a neutral decision
37 maker; and

38 (4) Requiring that the neutral decision maker issue findings of fact, conclusions and
39 recommendations.

40 3. The impartial administrative review process shall be completed within a timely
41 manner after the alleged violation is reported.

42 4. This impartial review process shall not apply to investigations of alleged patient,
43 resident or client abuse or neglect conducted pursuant to section 630.167.

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