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117TH CONGRESS
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H. R. 5730

To amend part E of title IV of the Social Security Act to require States to prohibit genital surgery on foster children with variations in sex characteristics who are under six years of age as a condition of receiving grants under such part.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 26, 2021

Ms. GARCIA of Texas (for herself, Mr. TAKANO, Mr. RASKIN, Ms. PRESSLEY, Mr. QUIGLEY, Ms. JACKSON LEE, and Mr. PAYNE) introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To amend part E of title IV of the Social Security Act to require States to prohibit genital surgery on foster children with variations in sex characteristics who are under six years of age as a condition of receiving grants under such part.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PREAMBLE.

(a) The Congress opposes all forms of prejudice, bias, and discrimination, and affirms its commitment to the dignity and autonomy of all people, including those born with variations in their physical sex characteristics. The

Congress especially notes the importance of protecting children within the guardianship of the foster care system.

(b) ''Variations in physical sex characteristics'' is an umbrella term used to describe a wide range of natural bodily variations in traits including genitals, gonads, hormone function, and chromosomal patterns.

(c) People born with variations in their physical sex characteristics are a part of the fabric of the Nation's diversity and are equally entitled to dignity and bodily autonomy.

(d) People born with variations in their physical sex characteristics are regularly subjected in infancy to surgeries to change the appearance or function of those variations, even though such surgeries may result in lasting harm.

(e) The Congress recognizes that surgeries on infants with variations in their physical sex characteristics are often justified by generalized assumptions about people's preferences about their bodies' appearance and function. These assumptions perpetuate gender stereotypes and may not reflect an individual's actual preferences when they are capable of articulating their wishes.

(f) Not all persons with variations in their physical sex characteristics will need or desire the surgeries that may be recommended or performed on them in infancy.

People born with variations in their physical sex characteristics should be free to choose whether to undergo surgeries that impact not only their bodily autonomy but also their reproductive and sexual futures.

(g) The Congress recognizes that leading pediatric hospitals have begun to institute partial bans on these surgeries on patients who are too young to participate in a meaningful discussion of the implications of these surgeries.

(h) Therefore, the Congress calls upon the States to hold health professionals responsible for safeguarding the bodily autonomy of people born with variations in their physical sex characteristics and ensuring patient-centered care that conforms with best practices in the medical profession by ending the practice of performing specified surgeries on such children when they are under the age of six and the surgery is not required to address an immediate risk of physical harm, as provided.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Individuals with variations in their physical sex characteristics may present with differences in genital anatomy, internal reproductive structures, chromosomes, or hormonal variations. ''Intersex'' refers to the variety of different physical indicators

that create those differences. As many as 1.7 percent of babies are born with physical sex characteristics which do not conform to the expectations for a typical male or female. The vast majority of babies born with these variations do not require surgical intervention related to their physical sex characteristics immediately, if at all.

(2) Beginning in the 1950s physicians in the United States began performing irreversible surgeries (often referred to as genital-normalizing surgeries) on infants with variations in their physical sex characteristics without medical justification.

(3) As many as two-thirds of these irreversible surgeries occur on infants under the age of two. A literature review of genital surgery conducted on children with variations in their physical sex characteristics published in the Journal of Steroid Biochemistry and Molecular Biology found that between 2005 and 2012 the average age of patients was 11.2 months old and the median age was 9.9 months at initial surgery.

(4) These surgeries, which include unnecessary infant vaginoplasties, clitoral reductions and recessions, and removal of gonadal tissues, are often performed before a child can even speak or stand,

meaning the individual is excluded from the decision whether to undergo these irreversible procedures.

(5) There is evidence that these surgeries cause severe psychological and physiological harm when performed without the informed consent of the individual. These harms may include scarring, chronic pain, urinary incontinence, loss of sexual sensation and function, sterilization, depression, post-traumatic stress disorder, suicidality, and incorrect gender assignment.

(6) A number of domestic and international human rights organizations have conducted thorough inquiries into genital surgeries on infants with variations in their physical sex characteristics and have concluded that these procedures are cruel and catastrophic, as follows:

(A) The United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment explained in 2013, ''children who are born with atypical sex characteristics are often subject to irreversible sex assignment, involuntary sterilization, involuntary genital normalizing surgery, performed without their informed consent, or that of their parents, 'in an attempt to fix

their sex,' leaving them with permanent, irreversible infertility and causing severe mental suffering.''.

(B) The United Nations High Commissioner for Human Rights explained in 2015, ''medically unnecessary surgeries and other invasive treatment of intersex babies and children . . . are rarely discussed and even more rarely investigated or prosecuted. . . . The result is impunity for the perpetrators; lack of remedy for victims; and a gap between legislation and the lived realities of intersex people.''.

(C) The World Health Organization explained in 2015, that children with variations in their physical sex characteristics have been ''subjected to medically unnecessary, often irreversible, interventions that may have lifelong consequences for their physical and mental health, including irreversible termination of all or some of their reproductive and sexual capacity. . . . Human rights bodies and ethical and health professional organizations have recommended that free and informed consent should be ensured in medical interventions for people with intersex conditions, including full

information, orally and in writing, on the suggested treatment, its justification and alternatives.''.

(D) Physicians for Human Rights has ''call[ed] for an end to all medically unnecessary surgical procedures on intersex children before they are able to give meaningful consent to such surgeries.''.

(E) Human Rights Watch concluded that these surgeries are ''often catastrophic, the supposed benefits are largely unproven, and there are generally no urgent health considerations at stake. Procedures that could be delayed until intersex children are old enough to decide whether they want them are instead performed on infants who then have to live with the consequences for a lifetime.''.

(7) Intersex advocacy groups led by individuals with variations in their physical sex characteristics themselves advocate for the postponing or banning of these surgeries, as follows:

(A) Those subjected to surgery to alter their variations in sex characteristics at a young age express despair over the fact that they were unable to make these decisions for

themselves, publishing about their experiences in major news outlets: ''I know firsthand the devastating impact [these surgeries] can have, not just on our bodies but on our souls. We are erased before we can even tell our doctors who we are. Every human rights organization that has considered the practice has condemned it, some even to the point of recognizing it as akin to torture.''.

(B) Young people born with variations in their physical sex characteristics who have been able to participate in these life-altering decisions are thriving, such as a young California resident with variation of sex characteristics who was not forced to undergo surgery in infancy and instead participated in the decision at the age of 16. They told reporters that for them, surgery ''was the right choice, but that's very much an anomaly for intersex people. . . . The important thing was that I was old enough to make that decision for myself.''.

(8) The United States Department of State has acknowledged Intersex Awareness Day in both 2016 and 2017 by recognizing the harm of these surgeries. In both years the Department released state-

ments recognizing that ''at a young age, intersex persons routinely face forced medical surgeries without free or informed consent. These interventions jeopardize their physical integrity and ability to live freely.''.

(9) In light of ongoing advocacy by the intersex community, in 2005 the San Francisco Human Rights Commission performed an investigation into this topic and issued an in-depth report, recommending that '' 'normalizing' interventions should not occur in infancy or childhood. Any procedures that are not medically necessary should not be performed unless the patient gives their legal consent.''.

(10) Physicians who have participated in these surgeries have also expressed remorse that their training did not properly prepare them to respect the bodily autonomy of people born with variations in their physical sex characteristics. As a Stanford-educated urologist explains: ''I know intersex women who have never experienced orgasm because clitoral surgery destroyed their sensation; men who underwent a dozen penile surgeries before they even hit puberty; people who had false vaginas created that scarred and led to a lifetime of pain during intercourse . . . the psychological damage caused by

intervention is just as staggering, as evidenced by generations of intersex adults dealing with post-traumatic stress disorder, problems with intimacy and severe depression. Some were even surgically assigned a gender at birth, only to grow up identifying with the opposite gender.''.

(11) When the physical health of an infant born with variations in their physical sex characteristics is threatened and medical attention cannot be safely deferred, all therapeutic treatment options should remain available to children, families, and medical professionals to ensure that the imminent physical danger is addressed.

(12) The United States should serve as a model of competent and ethical medical care and has a compelling interest in protecting the physical and psychological well-being of children, including those born with variations in their physical sex characteristics.

SEC. 3. STATES REQUIRED TO PROHIBIT SPECIFIED SURGERIES ON FOSTER CHILDREN WITH VARIATIONS IN SEX CHARACTERISTICS WHO ARE UNDER 6 YEARS OF AGE, AS A CONDITION OF PARTICIPATION IN THE FEDERAL FOSTER CARE AND ADOPTION ASSISTANCE PROGRAM.

(a) STATE PLAN REQUIREMENT.—Section 471 of the Social Security Act (42 U.S.C. 671) is amended—

(1) in subsection (a)—

(A) by striking ''and'' at the end of paragraph (36);

(B) by striking the period at the end of paragraph (37) and inserting ''; and''; and

(C) by adding at the end, the following:

''(38) provides that the State shall have in effect the laws and procedures described in subsection (f), which shall specify appropriate penalties and enforcement mechanisms described in subsection (f)(3) to ensure compliance with the laws and procedures.''; and

(2) by adding at the end the following:

''(f) STATE LAWS AND PROCEDURES TO PROHIBIT GENITAL SURGERY ON FOSTER CHILDREN BORN WITH VARIATIONS IN THEIR PHYSICAL SEX CHARACTERISTICS WHO ARE UNDER 6 YEARS OF AGE.—

''(1) IN GENERAL.—The laws and procedures described in this subsection are laws and procedures which prohibit a physician who is licensed to provide medical care under State law from performing any of the following surgeries on a foster child who has not attained 6 years of age and who is an individual born with variations in their physical sex characteristics:

''(A) Clitoroplasty, clitoral reduction, or clitoral recession, including corporal-sparing procedures.

''(B) Gonadectomy.

''(C) Vaginoplasty, urogenital sinus mobilization, or vaginal exteriorization.

''(2) DEFINITIONS.—In paragraph (1):

''(A) INDIVIDUAL BORN WITH VARIATIONS IN THEIR PHYSICAL SEX CHARACTERISTICS.—The term 'individual born with variations in their physical sex characteristics' means an individual born with physical traits, including genitals, gonads, hormone function, or chromosomal patterns, that vary from stereotypical notions regarding the development, appearance, or function of sex characteristics.

''(B) SURGERY REQUIRED TO ADDRESS AN IMMEDIATE RISK OF PHYSICAL HARM.—The term 'surgery required to address an immediate risk of physical harm' means—

''(i) surgery to remove tissue that is malignant;

''(ii) surgery to create an opening to allow urine or feces to exit the body where an opening is underdeveloped or not present;

''(iii) surgery to reposition internal organs that formed outside of the body;

''(iv) surgery that is required to treat complications of a previous surgery and cannot be delayed without increasing physical health risks to the patient; and

''(v) any other surgery necessary to preserve life in the event of a medical emergency.

''(3) ENFORCEMENT.—

''(A) IN GENERAL.—The relevant licensing entity of the State shall consider a violation of a State law or procedure described in paragraph (1) to be unprofessional conduct, and

shall discipline any violator of such a law or procedure accordingly.

''(B) CONCURRENT AUTHORITY.—The relevant department of health or regulatory body of a State shall have concurrent authority to initiate proceedings to address violations of a State law or procedure described in paragraph (1).

''(4) RULE OF INTERPRETATION.—This subsection shall not be interpreted to require a State to impose liability on a hospital at which a violation of a State law or procedure described in paragraph (1) occurs.''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsection (a) shall take effect on the 1st day of the 1st calendar quarter that begins 1 year or more after the date of the enactment of this Act, and shall apply to payments under part E of title IV of the Social Security Act for calendar quarters beginning on or after such date.

(2) DELAY PERMITTED IF STATE LEGISLATION REQUIRED.—If the Secretary of Health and Human Services determines that State legislation (other than legislation appropriating funds) is required in

order for a State plan developed pursuant to part E of title IV of the Social Security Act to meet the additional requirements imposed by the amendments made by subsection (a), the plan shall not be regarded as failing to meet any of the additional requirements before the 1st day of the 1st calendar quarter beginning after the 1st regular session of the State legislature that begins 1 year or more after the date of the enactment of this Act. For purposes of the preceding sentence, if the State has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.

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