

## HDJ IS FOLLOWING THE EXECUTIVE ORDER RELATED TO GENDER-AFFIRMING CARE AND LEGAL CHALLENGES

February 17, 2025

An Executive Order (EO) rejecting the practice of gender-affirming care for minors was issued on January 28, 2025. *Protecting Children from Chemical and Surgical Mutilation*, Exec. Order No. 14,187, 90 Fed. Reg. 8,771 (Jan. 28, 2025).<sup>1</sup> Under the EO, the United States will not “fund, sponsor, promote, assist, or support the so-called ‘transition’ of a child from one sex to another, and it will rigorously enforce all laws that prohibit or limit these destructive and life-altering procedures.”

**NOTE:** Below we give information about two Temporary Restraining Orders (TROs) that have already been issued by federal courts in Maryland and Washington, which temporarily block the enforcement of the EO. However, further legal proceedings must occur before any final decision is issued and presumably elevated to appellate courts.

The EO directs federal agencies to take immediate steps to ensure institutions receiving federal research or education grants end chemical and surgical interventions related to gender transition in individuals under nineteen years old. The targeted care includes chemical interventions such as hormone treatments and puberty blockers for the purpose of aiding gender transition and surgical procedures aimed at altering an individual's physical appearance to resemble that of the opposite gender.

The EO calls for the establishment of a regulatory body to monitor and investigate any reported violations. Enforcement will be through the following:

- Teaching institutions receiving federal research or education grants will lose funding if they provide gender-affirming care to minors
- HHS will issue regulations and subregulatory guidance to make the prohibition a condition of participation or condition for coverage for Medicare and Medicaid
- The United States Attorney General will issue legislation creating a private right of action so families can sue medical professionals who provide gender-affirming care to their children
- Law enforcement agencies will increase investigations of providers under the Food, Drug, and Cosmetic Act, suggesting the public may have been misled about the long-term effects of gender-affirming care

State Attorneys General have had mixed responses to the EO. In Virginia, Attorney General Miyares issued a memo to UVa and VCU, announcing: “my office will be closely monitoring this issue and the actions of the Commonwealth’s agencies.”<sup>2</sup> Gender-affirming care to minors had been suspended at several hospitals in the Commonwealth but at least one has started offering the services after a TRO was issued in Maryland District Court.

Other Attorneys General are cautioning providers against following the directives of the EO. In New York, Attorney General James sent a letter to hospitals reminding them that withholding services to patients on the

<sup>1</sup> <https://www.whitehouse.gov/presidential-actions/2025/01/protecting-children-from-chemical-and-surgical-mutilation/>.

<sup>2</sup> [Attorney General Jason Miyares Memo dated January 30, 2025.pdf](#).

basis of gender identity is illegal discrimination under state law.<sup>3</sup> In California, Attorney General Bonta opposed the EO and invoked the Transgender, Gender Diverse, and Intersex Inclusive Care Act, a state law that protects individuals undergoing gender-affirming care and prohibits providers from cutting off this care.

Hospital systems that continue providing prohibited care risk losing all medical education and research grants and risk being terminated from participation in Medicare, Medicaid, and other federal programs. We anticipate additional guidance will be issued by HHS, DOJ, and other federal agencies in the coming weeks and months.

The EO relates solely to gender-affirming care for patients aged nineteen and under. The EO does not address the use of medications and services to cisgender individuals in any context other than gender-affirming care. Further, the EO does not impact gender-affirming care (medication and surgical) for patients aged nineteen and over.

## CURRENT LEGAL CHALLENGES

Several legal challenges could impact the enforceability of the EO. On February 5, 2025, several plaintiffs including PFLAG, Inc, a transgender advocacy group, and the parents of several minors, filed suit in the United States District Court in Maryland. Seeking injunctive relief, Plaintiffs assert the EO violates constitutionally protected rights to free speech, due process, and equal protection as well as anti-discrimination laws, and exceeds executive authority. *PFLAG, Inc. v. Trump*, Civil Action No. 1:25-cv-00337 (D.M.D. 2025). On the afternoon of February 13, 2025, the Court granted Plaintiffs' Motion for a TRO which prohibits HHS, NIH, and NSF from conditioning or withholding federal funding based on the fact that a healthcare entity performs gender-affirming care to a patient under the age of nineteen. The TRO will be in effect for fourteen days.

Additionally, on February 7, 2025, the states of Washington, Minnesota, and Oregon filed a federal suit with a group of doctors seeking a TRO on the basis that the EO violates patients' constitutional rights. *State of Washington v. Trump*, Civil Action No. 2:25cv244 (W.D. Wa. 2025). After a hearing, the Court issued a TRO on February 14, 2025.

Other challenges assert that the Executive Branch lacks the legal authority to condition federal funding by banning certain medical care. For example, twenty-three Attorneys General filed a federal suit to halt the federal funding freeze. On January 31, the Rhode Island District Court issued a Temporary Restraining Order that prohibits federal agencies from taking actions that would "pause, freeze, block, cancel or terminate" awards and obligations. *State of New York v. Trump*, Civil Action No. 1:25cv39 (D.R.I. 2025).

There are also ongoing legal challenges to state laws that prohibit gender transition procedures for minors, now in twenty-six states. A case challenging Tennessee's ban on gender-affirming care is currently before the United States Supreme Court. *United States v. Skrametti*, Docket No. 23-477. Oral arguments were heard in December, and a decision may provide insight into whether the EO will survive judicial scrutiny.

## CONCLUSION

The EO raises significant legal and ethical questions related to medical autonomy and decisions, and its impact upon patients already undergoing gender transition treatment may be quite significant. HDJ will continue to monitor developments related to the EO, federal guidance, and related legal challenges. We are pleased to continue assisting health systems and other providers as they navigate these issues. Please contact any of the following Hancock Daniel & Johnson attorneys for assistance: Mary Malone, Kim Daniel, Sara Bugbee, Ben Traynham, or Ashley Calkins.

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<sup>3</sup> <https://ag.ny.gov/sites/default/files/letters/ag-james-to-hc-providers-re-tro-letter-2025.pdf>