

Office of the Governor
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June 29, 2023

VIA HAND DELIVERY

Honorable Clay J. Schexnayder
Speaker of the House
Louisiana House of Representatives
Post Office Box 94062
Baton Rouge, Louisiana 70804-9062

RE: Veto of House Bill 648 of the 2023 Regular Session

Dear Speaker Schexnayder:

Please be advised that I have vetoed House Bill 648 of the 2023 Regular Session.

This bill is entitled the "Stop Harming Our Kids Act," which is ironic because that is precisely what it does. This bill denies healthcare to a very small, unique, and vulnerable group of children. It forces children currently stabilized on medication to treat a legitimate healthcare diagnosis to stop taking it. It threatens the professional licensure of the limited number of specialists who treat the healthcare needs of these children. It takes away parental rights to work with a physician to make important healthcare decisions for children experiencing a gender crisis that could quite literally save their lives. And, without doubt, it is part of a targeted assault on children that the bill itself deems not "normal."

When I became governor of this state in 2016 my first action was to expand Medicaid to make sure that the people of Louisiana had access to much needed healthcare. I have also recognized that in some instances, such as to curtail the opioid crisis, legitimate limitations, safeguards, or prior authorizations on certain medicines may be necessary. During my two terms as governor, I have signed into law many instruments that prioritized safely increasing access to mental and physical healthcare for adults and children in this state. It is unfathomable to think that in my last few months serving as governor of this state that I would sign into law a bill that categorically denies healthcare for children and families based on propaganda and misinformation generated by national interest groups.

I have followed the debate on this bill closely as it spread across our country. I have had the benefit of hearing the inflammatory talking points of the proponents regurgitated in each state. I have reviewed the litigation pending in states that have already enacted this law and I have read the decision issuing an injunction against implementation of the same bill in Florida, released by a federal district court in Florida on June 6, 2023. I have been able to study every word of this bill not only as governor, but as a trained lawyer for nearly twenty-five years. My job as governor is to protect the children and families of Louisiana, my service in the military instilled in me the need to make decisions based on data and facts,

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and my training as a lawyer allows me to critically scrutinize the words in this Enrolled bill. I assessed the need for this bill based on Louisiana data and facts and read every word of this bill multiple times to determine if there was any possible merit to this bill. There is not.

According to the March 2023 Louisiana Department of Health's Study on Gender Reassignment Procedures on Minors, from 2017 – 2021 there were zero gender reassignment surgical procedures performed on children in Louisiana, zero. The proponents of this bill suggest that it is necessary to stop physicians from mutilating our children by performing gruesome sex change surgeries. This is simply not happening in Louisiana. In fact, there was never any evidence or testimony that it was happening here and if it were, it would be a most egregious example of breach of standard of care and medical malpractice. I have faith and trust in our Louisiana physicians that they are not performing any unnecessary surgical procedures on children who have been diagnosed with gender dysphoria. In fact there are a great number of medical associations that acknowledge and support treatment for this diagnosis, including.

The Gender Reassignment report further showed that the entire issue of gender reassignment impacts a very small subset of the population. In 2021, of 794,779 children enrolled in Medicaid only 465 were diagnosed by a healthcare provider with gender dysphoria, and of those only 57 were ultimately considered candidates for puberty blockers or hormone replacements. Also, in 2021 there were only 12 providers statewide who prescribed puberty blockers or hormone replacements based on a diagnosis of gender dysphoria. So, out of more than three quarters of a million children in Louisiana who are receiving medically approved and appropriate healthcare for a recognized medical diagnosis, this bill is targeting 57 of those who are receiving treatment from only 12 providers in this state.

Data and facts do not support the need for this bill. But what makes this bill even more appropriate for a veto are the multiple vague, unenforceable, and unconstitutional provisions littered throughout the bill. I have never issued a veto message with the degree of detail that I am providing here. However, HB 648 is so blatantly defective on so many levels that brevity is impossible.

In §1098.1(1), the definition of "healthcare professional" used in this bill is highly questionable as it cross-references a statute in the criminal code that establishes the crime of battery of emergency room personnel, R.S.14:34.8. This criminal code statute covers a sweeping breadth of healthcare professionals, ranging from a physician all the way to "any other person who otherwise assists in or supports the performance of healthcare services" and every potential provider in between. It demonstrates a lack of interest or proper research on which professionals make up the multidisciplinary teams that provide healthcare for children with gender dysphoria and confirms that this bill is a solution looking for a problem.

In §1098.2(A), the preface of the restrictions in this bill includes phrases such as "attempt to alter a minor's appearance," "attempt to validate minor's perception of his sex," and "minor's perception is inconsistent with his sex." All of these phrases completely disregard the more than thirty professional

medical associations and organizations¹ that have recognized gender dysphoria as a medical condition with a legitimate diagnosis that can be addressed with necessary lifesaving treatments. It exemplifies that this bill is not intended to protect children from malpractice, harmful, or unnecessary procedures. But rather, this bill dismisses the medical legitimacy of gender dysphoria as a healthcare condition by purporting to put into law that healthcare providers are attempting to validate perceptions. How can this be enforced? Who decides perception? Are trained physicians and psychologists in this state unable to make a diagnosis at risk of losing their licenses? There can be no greater abuse of lawmaking privileges than to use the law to disregard a medical condition and minimize the necessity of healthcare treatments by telling patients that their genuine illness is just a perception, telling healthcare professionals that their ability to diagnose and treat is terminated, and telling parents they have no power to direct the healthcare of their children.

The first two restrictions in this bill, §1098.2(A)(1) and (2), prohibit prescription or administration of puberty blockers and hormone replacements. I relied on the data and facts and learned that very few children are candidates for these medications and may only be considered a potential candidate after two years of intense therapy and counseling, along with counseling for the parents. Much has been said by the proponents of this bill regarding side effects. However, as with any informed decision regarding healthcare, the parents and physicians must engage in a dialogue regarding the risks and rewards of taking any medications. It was well documented in the Gender Reassignment report that children with gender dysphoria have higher rates of depression and suicidal ideation. Parents testified during the hearings on the bill that their children had either tried to commit suicide or had strong suicidal tendencies. Surely, the legislature should not prohibit a discussion between a parent, child, and physician regarding an option to take medications just because there could be side effects, when doing so could also prevent a suicide. In fact, the New York Times recently reported these children experience attempts of suicide at a rate of seven times higher than other children.

The remaining restrictions in this bill, §1098.2(A)(3), (4), (5), and (6), prohibit gender reassignment surgeries on children. Since there are zero instances of physicians performing gender reassignment surgeries in Louisiana, I can only speculate that this was included in the bill at such length and with such vivid descriptions to generate concern and outrage where none was warranted. I think we all agree on both sides of this debate that children should not have unnecessary surgical procedures to change their gender. I believe that is why there have been zero surgical procedures in Louisiana. I can even agree with that prohibition in this bill, but unfortunately that is not the intent of this bill and seemed to be included for dramatic effect to overshadow the medically appropriate use of puberty blockers and

¹ American Academy of Child and Adolescent Psychiatry, American Academy of Dermatology, American Academy of Family Physicians, American Academy of Nursing, American Academy of Pediatrics, American Academy of Physician Assistants, American College Health Association, American College of Nurse-Midwives, American College of Obstetricians and Gynecologists, American College of Physicians, American Counseling Association, American Heart Association, American Medical Association, American Medical Student Association, American Nurses Association, American Osteopathic Association, American Psychiatric Association, American Psychological Association, American Public Health Association, Endocrine Society, Federation of Pediatric Organizations, National Association of Nurse Practitioners in Women's Health, National Association of Social Workers, National Commission on Correctional Health Care, Pediatric Endocrine Society, Society for Adolescent Health and Medicine, and World Medical Association.

hormone replacements. In fact, the bill's author and proponents refused to limit the bill's scope to prohibiting surgical intervention precisely because it is the hormone treatments they are really targeting.

There is language in this bill following the restrictions, §1098.2(B) and (C), that are incorrect and legally convoluted. The bill states in effect that the prohibited acts of prescribing or administering puberty blockers or hormone replacements or performing surgical procedures "shall not be considered healthcare services" but then states the prohibition of prescribing or administering puberty blockers or hormone replacements or performing surgical procedures "shall not limit or restrict the provision of healthcare." This is so poorly written that I cannot begin to suggest that I understand the legislative intent, but I do know that prescribing or administering puberty blockers or hormone replacements constitute healthcare services. The vagueness of these two statements and utter confusion that this will cause in the medical community and how they might be enforced are justification for a veto.

This bill has other structural defects that make it ripe for a veto. In the Enrolled bill, page 3, lines 1 through 14, there are four enumerated paragraphs that make statements about minors, but there is no preface or introductory paragraph to clearly state what these paragraphs are meant to allow or prohibit. They are not identified as exceptions to the prohibitions in §1098.2(A) and they are not clearly identified as allowable provisions of healthcare pursuant to §1098.2(C). In Subsection (C), "provision of healthcare" is not defined. There is no way for a healthcare provider to know what he may or may not do that could jeopardize his career and make his professional license subject to revocation or subject to other penalties provided for in this bill. This will chill the willingness of physicians to provide a whole range of healthcare treatments and procedures to transgender and cisgender kids alike, such as an endocrinologist prescribing puberty blockers to an eight year old who has started menstruation.

Although the context and scope of the statements in the Enrolled bill at page 3, lines 1 through 14 are vague, the discriminatory nature is crystal clear. It is at this point in this bill that the legislature is most blatantly discriminating against transgender children compared to those the legislature considers "normal." All four of these paragraphs, regardless of their purpose in this bill, are somehow even more offensive and create even greater legal uncertainty for the patients, families, and healthcare providers who are affected by this bill. Paragraph (1) uses the phrase "verifiable disorder of sex development, including but not limited to" - what else might the disorder be, could it be mental?; paragraph (2) distinguishes transgender children from "normal" children - what a blatant form of discrimination and who determines what is normal?; paragraph (3) addresses needing treatment caused by a "procedure prohibited by" this bill - what does this allow a provider to actually do?; paragraph (4) states the child is a candidate for "surgery" if there is threat of imminent danger of death or impairment - does this mean the legislature prefers surgery over puberty blockers or hormone replacements? It is legally impossible to determine what these four paragraphs ultimately mean or do or how a healthcare provider can comply with them.

Each Subsection of this bill is worse than the one before and §1098.2(D) is no exception. This provision is a legislative expression of disdain and disregard for transgender children. The overall effect of this Subsection is that a child who is being treated by a multidisciplinary team of healthcare experts on gender dysphoria, that has gone through two years of therapy, whose parents have gone through therapy, and who is stabilized on puberty blockers or hormone replacement therapy must stop taking those

medications. There are no exceptions, authorizations, or minimum standards. The proponents of this bill graciously call this the “weening period.” There is no word to describe this other than cruel. And, to make matters worse, the legislature is saying in this provision that it is acceptable to start a child on these medications between now and January 1, 2024, but then you still must take them off by December 31, 2024. So, every child currently stabilized on these medications must stop taking them and providers can continue to initiate treatment for the next six months, but then they must undo whatever good they have achieved for the child. The harm that this provision will cause to children, families, and healthcare providers makes it worthy of a veto.

Further evidence of the punitive nature of this bill is the healthcare professional disciplinary penalty in §1098.3. Our Louisiana healthcare professionals who are following the standards of care and best practices recognized by thirty professional medical associations and organizations risk having their licenses revoked for simply using their professional medical judgment to treat a child with gender dysphoria. A license revocation is the most severe action that a licensing board can take. Even though the revocation penalty in this bill is for two years, that may as well be a lifetime ban. A healthcare provider whose license has been revoked will have to report that long after the two-year period imposed by this bill and may cause secondary penalties such as being denied hospital admitting privileges or refusal to be included in a health plan insurer network. Because this bill unfairly penalizes healthcare providers for taking care of their patients it must be vetoed.

The provisions of this bill relative to consent, §1098.4, are as legally ambiguous as so many other parts of this bill. Subsection (A) states that a minor cannot consent to taking puberty blockers or hormone replacements or having surgical procedures, but (B) states that the minor can consent if they are subject to the provisions of §1098.2(D). It is hard to comprehend the intent of the legislature here since §1098.2(D) is the cruel provision that requires stabilized children to be taken off of their medication. Is the desired result that a child can consent to gender affirming care only in instances when the child is being denied continued use of gender dysphoria medication? And, based on the plain language of this bill, does this mean that a child stabilized on medication could conceivably consent to a surgical procedure during the weening period? Because it is impossible to know what exactly the child can consent to in this part of the bill, it must be vetoed.

The civil action provisions of §1098.5 are also vague and create a legal right of action without clarifying who the right of action is granted to and who it is against. This part of the bill interchangeably uses “minor” and “person” without clarifying whether it means the person is the minor, is the minor upon reaching the age of majority, is the minor’s parents, or is it just any “person” who alleges harm. And, what is the threshold of “harm”? Is it physical or mental harm? Is the private right of action against the prescriber of the puberty blockers or hormone replacement therapy or does this give a right of action against “any other person who otherwise assists in or supports the performance of healthcare services.” Who does this apply to? The receptionist at the physician’s office? And, what is meant by “harmed as a result of acts which are prohibited.” It doesn’t say harmed as a result of the prohibited act, but rather harmed as a result of acts which are prohibited. There is a real legal distinction between harm by an act and harm because an act was prohibited. Could a parent whose child commits suicide “as a result of acts which are prohibited” by the bill have a private right of action against a healthcare provider for not providing care? Finally,

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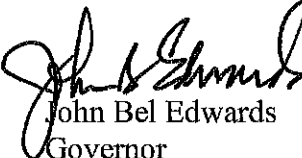
§1098.5(D)(2) provides for “damages for infertility or sterility,” but there is no way to prove that the infertility or sterility were caused by the puberty blockers or hormone replacement therapy. The convoluted civil action provisions of this bill make it worthy of a veto.

The final provision of this bill is §1098.6, which gives the attorney general authority to bring a civil action to enforce compliance with the bill. So, collectively this bill gives a licensing board authority to revoke a healthcare providers license for two years, gives the child and apparently any other “person” a private right of action to sue any number of individuals who fall under the healthcare professional definition in this bill, and now gives the attorney general the authority to seek injunctive, declaratory, or “any other appropriate remedy” to enforce this bill. I can only speculate that all of this was included in this bill to maximize intimidation and fear by healthcare providers who care for children with gender dysphoria. This bill’s complete overkill on enforcement and private rights of action makes it worthy of a veto.

There are so many fundamental problems with this bill that I must believe that many of its most staunch supporters have never read it word by word, line by line, like I have. I think that in this instance, in following other Southern states passing this bill, legislators put politics over people without considering the practical impacts of the bill. I firmly believe that the legislature has overstepped its authority and is interfering in critical healthcare decisions that only parents should make in consultation with their children and their children’s physicians and psychologists. This certainly isn’t an example of small, limited government that the bill proponents profess to champion.

Just as conservative courts have found in Alabama, Florida, Indiana, Kentucky, Arkansas, and Tennessee, I believe that there is no legitimate state interest and no rational basis that justifies harming this very small population of children, their families, and the healthcare professionals who care for them or for the cruel and extreme consequences imposed on children through the overt denial of healthcare by this bill. I believe that this bill violates the Fourteenth Amendment’s Equal Protection Clause because it targets and limits healthcare to transgender children that remain available to “normal” children. And finally, I believe that time will show that this veto was not just an exercise in compassion and respect for transgender children and their parents, but it was also the only legally responsible action to take because it is what is constitutionally required of me to do to uphold my oath of office as governor.

Sincerely,



John Bel Edwards
Governor

enclosure

cc: Honorable Patrick Page Cortez
Louisiana Senate President