

1 AN ACT relating to children's health.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 5 of this Act:*

6 *(1) "Biological sex" means the biological indication of male and female in the*
7 *context of reproductive potential or capacity, such as sex chromosomes, naturally*
8 *occurring sex hormones, gonads, and nonambiguous internal and external*
9 *genitalia present at birth, without regard to a person's psychological, chosen, or*
10 *subjective experience of gender;*

11 *(2) "Cross-sex hormones" means:*

12 *(a) Testosterone or other androgens given to biological females in amounts that*
13 *are larger or more potent than would normally occur naturally in healthy*
14 *biological females; and*

15 *(b) Estrogen given to biological males in amounts that are larger or more*
16 *potent than would normally occur naturally in healthy biological males;*

17 *(3) "Gender" means the psychological, behavioral, social, and cultural aspects of*
18 *being male or female;*

19 *(4) "Gender reassignment surgery" means any medical or surgical service that seeks*
20 *to surgically alter or remove healthy physical or anatomical characteristics or*
21 *features that are typical for the person's biological sex in order to instill or create*
22 *physiological or anatomical characteristics that resemble a sex different from the*
23 *person's biological sex, including but not limited to genital or nongenital gender*
24 *reassignment surgery performed for the purpose of assisting a person with a*
25 *gender transition;*

26 *(5) "Gender transition" means the process in which a person goes from identifying*
27 *with and living as a gender that corresponds to his or her biological sex to*

1 identifying with and living as a gender different from his or her biological sex,
2 and may involve social, legal, or physical changes;

3 (6) (a) "Gender transition procedures" means any medical or surgical service
4 provided or performed for the purpose of assisting a person with a physical
5 gender transition. Gender transition procedures include but are not limited
6 to physician's services, inpatient and outpatient hospital services, puberty-
7 blocking drugs, cross-sex hormones, or genital or nongenital gender
8 reassignment surgery.

9 (b) Gender transition procedures do not include:

10 1. Services to persons born with a medically verifiable disorder of sex
11 development, including a person with unresolvable, ambiguous
12 external biological sex characteristics, such as those born with forty-
13 six (46) XX chromosomes with virilization, forty-six (46) XY
14 chromosomes with undervirilization, or having both ovarian and
15 testicular tissue;

16 2. Services provided when a physician has otherwise diagnosed a
17 disorder of sexual development that the physician has determined
18 through genetic or biochemical testing indicates that a person does not
19 have normal sex chromosome structure, sex steroid production, or sex
20 steroid hormone action;

21 3. The acute and chronic treatment of any infection, injury, disease, or
22 disorder that has been caused by or exacerbated by the performance of
23 gender transition procedures, whether or not the gender transition
24 procedure was performed in accordance with state and federal law or
25 whether or not funding for the gender transition procedure is
26 permissible under Sections 1 to 5 of this Act; or

27 4. Any procedure undertaken because a person suffers from a physical

1 disorder, physical injury, or physical illness that would, as certified by
2 a physician, place the person in imminent danger of death or
3 impairment of major bodily function unless surgery is performed;

4 (7) "Health care provider" has the same meaning as in KRS 304.17A-005;

5 (8) "Nongenital gender reassignment surgery" means medical procedures performed
6 for the purpose of assisting a person with a physical gender transition, including
7 but not limited to:

8 (a) Surgical procedures for biologically male patients, such as augmentation
9 mammoplasty, facial feminization surgery, liposuction, lipofilling, voice
10 feminization surgery, thyroid cartilage reduction, gluteal augmentation,
11 hair reconstruction, or various aesthetic procedures; or

12 (b) Surgical procedures for biologically female patients, such as subcutaneous
13 mastectomy, voice masculinization surgery, liposuction, lipofilling, pectoral
14 implants, or various aesthetic procedures;

15 (9) "Physician" has the same meaning as in KRS 311.550;

16 (10) "Puberty-blocking drugs" means gonadotropin-releasing hormone analogues or
17 other synthetic drugs used in biological males to stop luteinizing hormone
18 secretion and therefore testosterone secretion, or synthetic drugs used in
19 biological females which stop the production of estrogen and progesterone, when
20 used to delay or suppress pubertal development in children for the purpose of
21 assisting a child with a gender transition; and

22 (11) "Public funds" means the same as in KRS 446.010.

23 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO
24 READ AS FOLLOWS:

25 (1) A physician or other health care provider shall not provide gender transition
26 procedures to any child under the age of eighteen (18) years.

27 (2) A physician or other health care provider shall not refer any child under the age

1 of eighteen (18) years to any health care provider for gender transition
2 procedures.

3 (3) Any referral for or provision of gender transition procedures to a child under the
4 age of eighteen (18) years by a health care provider shall be considered
5 unprofessional conduct and be subject to disciplinary action by the appropriate
6 licensing or certifying entity.

7 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO
8 READ AS FOLLOWS:

9 (1) Any violation of Section 2 of this Act shall be deemed as acting recklessly as
10 defined in KRS 501.020 for purposes of tort claims.

11 (2) Notwithstanding any other provision of the law to the contrary, for any violation
12 of Section 2 of this Act, the action may be brought by the child's parent or
13 guardian before the child attains age eighteen (18) years and may be brought by
14 the child within thirty (30) years after the child attains the age of eighteen (18)
15 years except:

16 (a) If at the time the child attains the age of eighteen (18) years he or she is
17 under other legal disability, the limitation period shall not begin to run until
18 the removal of the disability; or

19 (b) If during any period of time the person is subject to threats, intimidation,
20 manipulation, fraudulent concealment, or fraud perpetrated by the
21 physician or health care provider who prescribed or otherwise provided
22 gender transition procedures or by any person acting in the interest of the
23 physician or other health care provider, the limitation period shall not run
24 during this time period.

25 (3) A person may assert an actual or threatened violation of Section 2 of this Act as a
26 claim or defense in a judicial or administrative proceeding.

27 (4) In an action brought under this section:

1 (a) If the plaintiff prevails, he or she shall be entitled to reasonable costs and
 2 attorney's fees;

3 (b) Punitive damages as well as compensatory damages shall be awardable,
 4 including but not limited to:

5 1. Pain and suffering;

6 2. Loss of reputation;

7 3. Loss of income; and

8 4. Loss of consortium, including the loss of expectation of sharing
 9 parenthood; and

10 (c) Injunctive, declaratory, and any other appropriate relief may be awarded.

11 (5) Notwithstanding any other provision of law to the contrary, an action under this
 12 section may be commenced, and relief may be granted, in a judicial proceeding
 13 without regard to whether the person commencing the action has sought or
 14 exhausted available administrative remedies.

15 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO
 16 READ AS FOLLOWS:

17 (1) Public funds shall not be directly or indirectly used, granted, paid, or distributed
 18 to any entity, organization, or person that provides gender transition procedures
 19 to a child under the age of eighteen (18) years.

20 (2) Any amount paid by a person or an entity for the provision of gender transition
 21 procedures or as premiums for health care coverage that includes coverage for
 22 gender transition procedures shall not be exempt from taxation.

23 (3) Health care services provided to a child under the age of eighteen (18) years shall
 24 not include gender transition procedures if provided:

25 (a) In a facility owned by the state or a county or local government; or

26 (b) By a physician or other health care provider employed by the state or a
 27 county or local government.

1 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO
2 READ AS FOLLOWS:

3 *(1) The Attorney General may bring an action to enforce compliance with Sections 1*
4 *to 5 of this Act.*

5 *(2) Nothing in Sections 1 to 5 of this Act shall deny, impair, or otherwise affect any*
6 *right or authority of the Attorney General, the Commonwealth of Kentucky, or*
7 *any agency, officer, or employee of the state, acting under any other law other, to*
8 *institute or intervene in any proceeding.*

9 *(3) The General Assembly of the Commonwealth of Kentucky, by resolution, may*
10 *appoint one (1) or more of its members who sponsored or cosponsored Sections 1*
11 *to 5 of this Act in his or her official capacity to intervene as a matter of right in*
12 *any case to which the constitutionality or enforceability of Sections 1 to 5 of this*
13 *Act is challenged.*

14 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO
15 READ AS FOLLOWS:

16 *The Department for Medicaid Services and any managed care organization contracted*
17 *to provide Medicaid benefits pursuant to this chapter shall not reimburse or provide*
18 *coverage for gender transition procedures as defined in Section 1 of this Act to a child*
19 *under the age of eighteen (18) years.*

20 ➔SECTION 7. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304
21 IS CREATED TO READ AS FOLLOWS:

22 *(1) As used in this section, "gender transition procedures" has the same meaning as*
23 *in Section 1 of this Act.*

24 *(2) Health benefit plans shall not be required to provide coverage for gender*
25 *transition procedures.*

26 *(3) If a health benefit plan elects to provide coverage for gender transition*
27 *procedures, the plan shall not include coverage for gender transition procedures*

1 *for a child under the age of eighteen (18) years.*

2 ➔Section 8. If any provision of this Act or the application thereof to any person or
3 circumstance is held invalid, the invalidity shall not affect the other provisions or
4 applications of the Act that can be given effect without the invalid provision or
5 application, and to this end the provisions of this Act are severable.

6 ➔Section 9. This Act may be cited as the Kentucky's Children Deserve Help Not
7 Harm Act.

8 ➔Section 10. This Act shall take effect January 1, 2023, so that children in this
9 state currently using puberty-blocking drugs or cross-sex hormones have time for
10 appropriate medication tapering and discontinuation under the care of their physician or
11 other health care provider.