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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Trump Trans Care Order Raises New Legal Risks For Providers

By **Dan McKay**

Law360 (February 4, 2025, 3:09 PM EST) -- President Donald Trump's executive order restricting gender-affirming care for minors is likely to ignite lasting legal conflicts over the limits of presidential power and whether the policy is discriminatory. In the meantime, hospitals are wrestling with what care they can offer families right now and what comes next for those already undergoing treatment.

Supporters and opponents rally outside the U.S. Supreme Court on Dec. 4, 2024, as the justices heard arguments in a case involving Tennessee's law banning gender-affirming care for minors. President Donald Trump signed a sweeping order last week directing federal agencies to take steps to end gender-affirming care for youth. (Photo by Kevin Dietsch/Getty Images)

The sweeping order issued last week directs federal agencies to take steps to end gender-affirming care for youth by making changes to Medicaid, stepping up law enforcement investigations and barring institutions that receive research grants from offering the care.

Hospitals are divided over how to respond. Some are already limiting their services for transgender children and teens or stripping references to those services from websites. Others are still evaluating their options or simply not responding to questions about their status.

"Right now, we don't know yet exactly what the ideas of the executive order are going to mean when they are applied to the real world," said Elana Redfield, federal policy director at the UCLA School of Law's

Williams Institute, a research center focused on sexual orientation and gender identity.

"I think at the moment, one of the greatest risks is preemptive over-compliance; in other words, out of fear, providers may shrink or discontinue their services before we actually know what the rules are going to look like," she said.

Funding losses and law enforcement investigations are real threats, Redfield said. But federal agencies carrying out the executive order could be constrained by notice and comment requirements under the Administrative Procedure Act, separation-of-powers and equal-protection provisions in the Constitution, and statutory protections against sex discrimination.

"It's an open question how the Supreme Court, or even the appellate courts, will rule on this," said Sam M. Schwartz-Fenwick, a Chicago-based partner at Seyfarth Shaw LLP whose clients include employers and self-funded insurance plans. "It's going to be a very long and drawn out process in the near term."

Adding to the uncertainty is a challenge before the U.S. Supreme Court to a Tennessee law that restricts gender-affirming care for minors. Twenty-six states altogether have similar laws. Those statutes cover about 39% of the nation's transgender youth population between the ages of 13 and 17, according to KFF, a nonpartisan health policy and research organization.

The justices heard **arguments** in December in the Tennessee case but have not yet issued a ruling. The decision could make clear whether laws restricting transgender care warrant heightened scrutiny under the equal protection clause of the 14th Amendment.

The first legal skirmish over the executive order began Tuesday with a lawsuit filed on behalf of the advocacy group PFLAG and transgender people who say the order prohibits medical care they need.

The plaintiffs asked a Maryland federal judge to declare the order unconstitutional and block the Trump administration from cutting off funding to hospitals that provide gender-affirming care. They allege the order violates rights to free speech, due process and equal protection, and that it runs afoul of anti-discrimination laws and exceeds the president's authority.

High Stakes for Hospitals

Hospitals and other healthcare providers throughout the country are navigating uncertainty around what services they can offer and for how long.

Denver Health, a hospital and health system that serves about 25% of the population in Colorado's capital city, paused gender-affirming surgeries for patients under 19 last week as part of its response to the president's order. The health system said Trump's order threatens its participation in Medicaid, Medicare and other programs administered by the U.S. Department of Health and Human Services.

"The loss of this funding would critically impair our ability to provide care for the Denver community," Denver Health said in a statement last week.

In Washington, D.C., Children's National Hospital announced that it would pause puberty blocker and hormone therapy prescriptions for transgender youth patients. The hospital doesn't offer gender-affirming surgery.

Other healthcare organizations are still determining how to respond.

Chris Ramirez, a spokesperson for the University of New Mexico Health System in Albuquerque, said the organization is analyzing the order's "potential impacts on our campus community and patients" and will provide updates as it carries out the review.

Marie-Amélie George, a professor at Wake Forest University School of Law with expertise in gender identity law, said hospitals are split on how to respond, in part, because it isn't clear whether federal agencies will carry out the order by engaging in a formal rulemaking process. It's also unclear whether the administration has the authority to "condition federal funding this way," she said.

"What's driving the mixed responses is the ambiguous language of the executive order itself," George said.

Trump's order directs HHS to take "all appropriate actions" through Medicaid and other programs to end gender-affirming care for minors.

The work may include changes to conditions of participation in Medicaid and Medicare, according to the order, language that suggests federal officials may bar providers from participating in Medicaid and Medicare if they provide the care.

More broadly, the order declares that it's "the policy of the United States that it 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."

Federal agencies that fund research were also directed to ensure that medical schools and hospitals receiving grants don't participate in gender-affirming care for minors.

The executive order calls for prioritizing law enforcement investigations into what it called "female genital mutilation" and potential violations of the Food, Drug, and Cosmetic Act by entities that mislead the public about the long-term effects of gender-affirming care.

Redfield of the Williams Institute said the FDCA threats "are particularly ominous, as they seem to be directed at individual providers and/or researchers of gender-affirming care."

The executive order also has provisions calling for action against states that strip parental rights from parents who oppose gender-affirming care for their children. Federal officials are also instructed to work with Congress on a law that would allow families to sue medical professionals who provide the care.

The order "could have a very significant chilling effect on the ability of anyone to actually get this care, even if it's still theoretically allowed under an employer-sponsored benefit plan," Schwartz-Fenwick told Law360 Healthcare Authority.

Potential Federal Conflicts

George, the Wake Forest professor, said she expects litigation to focus on equal rights challenges and the president's authority to act.

"The executive order singles out medical treatments when used in the context of gender-affirming care; medical professionals are permitted to offer these treatments in all other contexts," she said. "It is therefore targeting trans individuals in particular, rather than a medical practice more generally."

The strength of equal protection claims may be influenced by the Supreme Court's forthcoming decision in the Tennessee case. The question before the justices focused on whether Tennessee's law violates the equal protection clause of the 14th Amendment, though some justices also **expressed interest** in the rights of parents to direct the upbringing of their children.

Opponents of the law say it warrants a higher level of scrutiny because it relies on sex-based classifications and discriminates against transgender people. Tennessee Attorney General Jonathan Skrmetti, a Republican, contends the law treats boys and girls equally.

If a hospital's funding is cut because it's providing gender-affirming care, the Administrative Procedure Act may play a role in a subsequent legal fight. The law sets out notice and comment rules for the development of regulations.

The risk of a funding interruption at some point is "very high" but may not stand up in court, Redfield said. The federal government faces strict requirements that should take time to fulfill before it can cut off funding.

But "these new conditions have been imposed suddenly and without deliberation and are in fact directly counter to the messaging that many recipients got when they applied for and received grants," Redfield said.

Separation-of-powers claims and Title IX protections against sex discrimination – incorporated into the Affordable Care Act – are also likely to surface in litigation. Another key question is whether legal challenges to the executive order will result in court orders halting federal action while the litigation plays out, or if federal officials can move forward while the lawsuits are pending.

Opponents of the policy may argue the order is "an overreach of federal power – that the federal government can't just by fiat say this is what's going to happen," Schwartz-Fenwick said.

Navigating State Obligations

In the days after the executive order dropped, some legal experts and officials raised objections that the order conflicts with state laws.

On Monday, New York Attorney General Letitia James sent a letter to hospitals reminding them that withholding services to patients on the basis of gender identity is illegal discrimination under state law. She also notified them that a court order blocking a planned federal funding freeze means they cannot lose funding simply because they provide gender-affirming care.

The letter followed reports that some New York providers had suspended gender-affirming care for youth in response to Trump's order.

Large hospitals, meanwhile, haven't shared much information publicly about their immediate plans for care.

"We are working through this developing situation to comply with applicable state and federal laws and regulations," said a spokesperson for NewYork-Presbyterian, a leading hospital and health system in the New York City area. "As always, our priority is to serve all our patients in a compassionate and responsible way."

By contrast, NYC Health + Hospitals, a corporation that operates public hospitals and clinics in the city, said flatly that it "continues to offer gender-affirming care."

In a written statement last week, California Attorney General Rob Bonta said the state's Transgender, Gender Diverse, and Intersex Inclusive Care Act protects families seeking gender-affirming care and providers who offer it.

Jocelyn A. Guyer, senior managing director at Manatt Health, the healthcare legal and consulting practice of Manatt Phelps & Phillips LLP, said the state laws mean providers can face legal risks if they cut off the care. That's particularly true for decisions affecting people already undergoing a course of treatment.

"Providers need to be ready for what is to come, but, for now, they also need to be careful not to shut down care prematurely, especially for young people already in the midst of treatment," she said.

Near-Term Uncertainty

For providers and families, clear answers aren't likely anytime soon, experts say.

"I think what we can expect in the near term is a lot of uncertainty," Redfield said, "and both providers and families, with the help of lawyers and community orgs, will have to negotiate that uncertainty for a while."

Any forthcoming push to exclude providers from Medicaid and Medicare based on gender-affirming care is likely to attract legal challenges from major medical associations, not just advocacy groups. The American Medical Association and other professional groups have opposed legal prohibitions on gender-affirming care for minors.

"Hospitals and doctors have fought hard to ensure that participation in Medicare and Medicaid is linked only to relevant health and safety issues rather than used as a weapon in political battles," Guyer said.

And it's clear employers and others will have to stay up to date on whether their health insurance plans meet evolving federal requirements.

"We're certainly in a time of flux and change, and it's uncertain what eventually is going to shake out as the new status quo," Schwartz-Fenwick said.

--Additional reporting by Hannah Albarazi. Editing by Haylee Pearl.

Update: This story has been updated with information about PFLAG's suit challenging the executive order.

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