86R7063 MCK-D

By:  Hernandez H.B. No. 2462

A BILL TO BE ENTITLED

AN ACT

relating to prohibited nonconsensual genital surgery on certain minors with intersex traits.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Sections 266.001 through 266.013, Family Code, are designated as Subchapter A, Chapter 266, Family Code, and a heading is added to Subchapter A to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS; EDUCATIONAL SERVICES; MEDICAL CARE

SECTION 2.  Chapter 266, Family Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. MEDICAL PROCEDURES AND TREATMENTS RELATED TO INTERSEX TRAITS

Sec. 266.051.  DEFINITIONS. In this subchapter:

(1)  "Intersex child" means an individual who is younger than 18 years of age and either:

(A)  has inborn chromosomal, gonadal, genital, or endocrine characteristics, or a combination of those characteristics, that are not suited to the typical definition of male or female or are atypical for the sex assigned; or

(B)  is considered by a medical professional to have inborn chromosomal, gonadal, genital, or endocrine characteristics that are ambiguous or atypical for the sex assigned.

(2)  "Medical procedure or treatment related to an intersex trait" includes:

(A)  hormonal treatment to treat or modify an intersex trait; or

(B)  genital surgery, including:

(i)  clitorectomy, clitoroplasty, clitoral reduction, and clitoral recession, including corporal-sparing procedures;

(ii)  vaginoplasty, introitoplasty, vaginal exteriorization, and partial or total urogenital sinus mobilization;

(iii)  labiaplasty and labial reduction;

(iv)  hypospadias surgery, relocation of the urethral meatus, and chordee release;

(v)  phalloplasty; and

(vi)  gonadectomy, including of testes, ovaries, ovotestes, or streak gonads.

(3)  "Medically necessary" means a medical procedure or treatment immediately necessary to treat an injury, illness, disease, or condition affecting the intersex child's health that if delayed would adversely affect the intersex child's physical health.

Sec. 266.052.  REQUIREMENTS FOR CERTAIN MEDICAL PROCEDURES OR TREATMENTS. A physician may not perform a medical procedure or treatment related to an intersex trait on a foster child unless:

(1)  the procedure or treatment is medically necessary for the physical health of the child and the child consents to the procedure or treatment; or

(2)  the procedure or treatment is not medically necessary for the physical health of the child, the child consents to the procedure or treatment, and a court authorizes the procedure or treatment as provided under this subchapter.

Sec. 266.053.  INFORMED CONSENT. (a) Consent to a medical procedure or treatment related to an intersex trait is voluntary and informed only if:

(1)  the child and the child's caregivers are provided with the information necessary for the child to provide voluntary and informed consent to the procedure or treatment, including:

(A)  the nature of the proposed procedure or treatment, including whether and the extent to which the procedure is irreversible;

(B)  the goals of the procedure or treatment, including whether the benefits of the proposed procedure or treatment are medical, psychological, or social, and the strength of the evidence supporting claims that the procedure provides each of those benefits;

(C)  the possible risks associated with the procedure or treatment, including, if applicable, risk from anesthesia, loss of reproductive capacity, and loss of sexual function or sensation; and

(D)  the alternatives to the proposed procedure or treatment, including delay of the procedure or treatment;

(2)  the child and the child's caregivers are evaluated on at least two separate occasions by a mental health professional with previous experience treating individuals with intersex traits to ensure the child:

(A)  does not have an undiagnosed mental health condition; and

(B)  has capacity to understand the procedure or treatment and is providing voluntary and informed consent absent coercion from family members or medical staff; and

(3)  the consent is in writing and includes the following statements:

(A)  "I (name of child) certify that I understand (reprint of Subdivisions (1)(A)-(D)) and consent to (description of medical procedure or treatment) to be performed or provided by (name of physician) on (date the medical procedure or treatment is to be performed or provided on the child).";

(B)  "I (name of physician performing the procedure or providing the treatment) certify that I have discussed with (name of child and names of child's caregivers) (reprint of Subdivisions (1)(A)-(D)) on (date the information was provided)."; and

(C)  "I (name of mental health professional) certify that I have discussed with (name of child and names of child's caregivers) (reprint of Subdivisions (1)(A)-(D)) on (date the information was provided). It is my professional opinion that (name of child) actively desires (name of procedure or treatment) and is capable of providing informed consent."

(b)  The child's physician shall retain the original consent in the child's medical record and provide a copy of the consent to the child and the child's caregivers.

Sec. 266.054.  COURT APPROVAL OF CERTAIN MEDICAL PROCEDURES OR TREATMENTS. (a) If the department wants an intersex child to undergo a medical procedure or treatment related to an intersex trait that is not medically necessary or the child wants to undergo the procedure or treatment, the department or child may file a petition with the court having continuing jurisdiction over the intersex child seeking court approval of the procedure or treatment.

(b)  The court shall hold a hearing to determine whether the proposed medical procedure or treatment related to an intersex trait is in the child's best interest.

(c)  The child must be represented by an attorney at the hearing. The attorney for the child must:

(1)  possess adequate knowledge of intersex traits, the intersex population, and the range of medical procedures or treatments that may be pursued in connection with the child's intersex trait, including the option to delay any procedure or treatment;

(2)  communicate with the child, to the extent possible given the child's age, regarding:

(A)  the nature of the proposed medical procedure or treatment;

(B)  whether and the extent to which the proposed medical procedure or treatment is irreversible; and

(C)  the projected outcome of, the possible risks associated with, and the alternatives, including delay, to the proposed medical procedure or treatment;

(3)  interview the child, to the extent possible given the child's age, to determine the child's wishes regarding the pursuit or delay of any proposed medical procedure or treatment;

(4)  assist the child, to the extent possible given the child's age, in assessing the child's desires related to the child's medical care and in communicating the child's desires to the court; and

(5)  for a child younger than 12 years of age, argue against a proposed medical procedure or treatment that is not medically necessary.

(d)  Any party to the suit may submit to the court a report or introduce evidence from a qualified expert on:

(1)  intersex traits and the intersex population in general;

(2)  the child's specific intersex traits;

(3)  the range of medical procedures and treatments that may be pursued in connection with the child's intersex traits, including delay;

(4)  the specific medical procedure or treatment proposed for the child, including the risks and anticipated benefits associated with the procedure or treatment and the possibility that the child's ultimate gender identity may differ from the sex assigned;

(5)  whether and the extent to which the medical procedure or treatment:

(A)  is irreversible; and

(B)  may safely be delayed until the child is of an age to participate in the decision-making process;

(6)  the physician's responsibilities to obtain informed consent from the child and the child's parent or guardian and whether those responsibilities have been adequately discharged; and

(7)  the public statements of intersex individuals or patient advocates regarding Subdivisions (1)-(6).

(e)  Following the hearing, the court shall determine whether the proposed medical procedure or treatment related to an intersex trait is in the child's best interest and render an order with specific findings on:

(1)  whether clear and convincing evidence establishes that the short-term or long-term physical benefits of the proposed medical procedure or treatment outweigh the short-term or long-term physical risks;

(2)  whether clear and convincing evidence establishes that the short-term and long-term psychological benefits of the proposed medical procedure or treatment outweigh the short-term or long-term psychological risks;

(3)  the extent to which the proposed medical procedure or treatment would limit the child's future options for:

(A)  fertility;

(B)  development or construction of female-typical characteristics;

(C)  development or construction of male-typical characteristics; and

(D)  preservation of body characteristics unaltered by decisions the child did not initiate; and

(4)  whether clear and convincing evidence establishes that any limitation identified under Subdivision (3) is justified by an urgent need for the proposed medical procedure or treatment.

(f)  If the requirements of Section 266.053 are satisfied, the court may consider the child's consent to the proposed medical procedure or treatment related to an intersex trait as clear and convincing evidence for purposes of the court's best-interest determination under Subsection (e).

Sec. 266.055.  FOSTER CHILD'S CONSENT TO MEDICAL PROCEDURE OR TREATMENT. Notwithstanding Section 32.003 or 266.004 or other law, a foster child may consent to a medical procedure or treatment related to an intersex trait if the child provides voluntary and informed consent to the proposed medical procedure or treatment in accordance with Section 266.053.

SECTION 3.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.