By: Hernandez H.B. No. 1220

A BILL TO BE ENTITLED

AN ACT

relating to prohibited nonconsensual medical procedures and treatment on foster children with intersex traits.

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

SECTION 1. Chapter 266, Family Code, is amended by designating Sections 266.001 through 266.013 as Subchapter A and adding a subchapter heading 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 trait" means an inborn chromosomal, gonadal, genital, or endocrine characteristic, or a combination of those characteristics, that is not suited to the typical definition of male or female or is atypical for the sex assigned to an individual.

(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 a child's health that if delayed would adversely affect the 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 and the child consents to the procedure or treatment; or

(2) for a procedure or treatment that is not medically necessary, 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 physician provides to the child and the child's caregivers 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) on at least two separate occasions a mental health professional with previous experience treating individuals with intersex traits evaluates the child and the child's caregivers to ensure the child has capacity to understand the procedure or treatment and is providing voluntary and informed consent absent coercion from caregivers, 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 scheduled 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) For a medical procedure or treatment related to an intersex trait that is not medically necessary, if the department determines a foster child should undergo the procedure or treatment 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 child seeking court approval for 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, the range of medical procedures or treatments available to treat the child's intersex trait, and the alternatives to medical procedures or treatments, 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 who has

not been appointed a separate guardian ad litem, argue against a proposed medical procedure or treatment that is not medically necessary.

(d) If a guardian ad litem has been appointed for a child younger than 12 years of age, the guardian ad litem must argue against a proposed medical procedure or treatment that is not medically necessary at the hearing.

(e) 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 available to treat the child's intersex traits and the alternatives, including delay, to available medical procedures and treatments;

(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 duty to obtain informed consent

from the child and whether the duty has been adequately discharged; and

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

(f) 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 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 procedure or treatment outweigh the short-term or long-term psychological risks;

(3) the extent to which the proposed 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 procedure or treatment.

(g) 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 (f).

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 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, 2027.