

CLIENT ALERT

## Current Status of White House Executive Order on Gender-Affirming Care

MARCH 5, 2025

### MARCH 4, 2025, UPDATE

On March 4, 2025, in response to a lawsuit by several civil rights organizations and individuals against the federal government's policy directives on gender-affirming care, a federal court issued a partial block of Executive Order 14187 titled "Protecting Children from Chemical and Surgical Mutilation" and Executive Order 14168 titled "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government" (the EOs).<sup>[1]</sup> Among other things, the EOs direct the federal government to withhold funding and support to healthcare institutions, providers, and research organizations that deliver gender-affirming medical care. The nationwide preliminary injunction by the district court in Maryland follows a more limited injunction enjoining the federal government from withholding funds to those entities and professionals within Washington, Minnesota, Colorado, and Oregon, as a result of litigation initiated by those states' attorneys general.<sup>[2]</sup>

The Maryland district court denied the federal government's argument that the plaintiffs lacked standing to bring their claims, because the plaintiffs had sufficiently articulated a chain of events from the EOs that would lead to injury to the plaintiffs. The court also found that the EOs likely exceed presidential authority, infringe on the powers of Congress, and facially discriminate on the basis of transgender status and sex, in violation of the separation of powers, Section 1556 of the Affordable Care Act, and the Fifth Amendment's Equal Protection clause. Because the court found that the plaintiffs would likely succeed on the merits, would likely suffer irreparable harm by the EOs, and the balance of equities and the public interest weigh towards a preliminary injunction, the court barred the federal government from conditioning or withholding funds from a healthcare entity or professional for providing gender-affirming care.

Although the EOs would not affect healthcare entities and providers while the parties continue to litigate the merits of the claims, all healthcare providers and entities regardless of geographic location should carefully follow any future developments in the government's regulation of gender-affirming care.

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On January 28, 2025, President Trump issued Executive Order 14187 titled "Protecting Children from Chemical and Surgical Mutilation" (the EO) which ordered the federal government to aim to limit gender-affirming care offered to children and teenagers under the age of nineteen. The EO warns that the federal government "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.”

## THE EXECUTIVE ORDER

The EO provides a definition of “chemical and surgical mutilation” that is intended to encompass all forms of what is commonly referred to as gender-affirming care, including the prescription of puberty blockers and surgical procedures that attempt to alter an individual’s physical appearance as specified in the EO. The EO orders that federal agencies rescind or amend policies that rely on the World Professional Association for Transgender Health (WPATH) guidance, an international guideline for healthcare professionals, and directs all federal departments and agencies to “immediately take appropriate steps to ensure that institutions receiving” federal research or education grants no longer provide gender-affirming care to children. Health insurance for federal employees and TRICARE (the acronym for “Treatment, Retired, Invalid, Care, Active, Reserve, and Dependents”), the Department of Defense’s insurance plan for military dependents, are ordered to exclude from coverage services for gender-affirming care for individuals within the scope of the EO.

The EO contains specific directives for the United States Department of Health and Human Services (HHS) and the United States Department of Justice (DOJ). According to the EO, HHS must take “all appropriate actions” to end gender-affirming care of children, including through regulations on Medicare or Medicaid conditions of participation or conditions for coverage. The HHS is also ordered to rescind its March 2, 2022, memorandum titled “HHS Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy,” which signaled that restrictions on gender-affirming care may violate section 1557 of the Affordable Care Act. The EO gives HHS ninety (90) days to perform and report on its review of the existing literature on “best practices” for promoting the health of children who assert gender dysphoria and offers protections to whistleblowers who report on institutions that have allegedly provided gender-affirming care in violation of the EO.

Meanwhile, the DOJ is directed to review its policies and statutory authority to enforce statutes prohibiting “female genital mutilation” and convene with State Attorneys General to further that enforcement. The DOJ was also ordered to work with Congress to enact a private right of action for children or parents of children who had received gender-affirming care. Notably, the EO instructs the DOJ to “prioritize investigations and take appropriate action to end child-abusive practices by so-called sanctuary States,” including the invocation of the Parental Kidnapping Prevention Act and any constitutional rights.

## COMPLIANCE IMPLICATIONS AND LEGAL CHALLENGES TO THE EXECUTIVE ORDER

Because some aspects of the EO are not consistent with the laws of certain states, full compliance with the EO’s restrictions on the provision of gender-affirming care creates a compliance risk for health providers and insurers. For example, on February 3, 2025, New York’s Attorney General, Letitia James, advised health systems operating in the State of New York that the Attorney General’s Office expected healthcare providers to be fully compliant with New York’s anti-discrimination laws relevant to access to gender-affirming care. On February 5, 2025, fourteen state attorneys general addressed the EO with a similar public statement expressing their willingness to “enforce state laws that provide access to gender-affirming care.”

On February 4, 2025, litigation challenging the EO was initiated by several groups, including the American Civil Liberties Union; Lambda Legal, an LGBTQ+ civil rights organization; PFLAG National, an LGBTQ+ advocacy group; and GLMA, an association of health professionals focused on LGBTQ+ equality, in the U.S. District Court for the District of Maryland. The plaintiffs seek a temporary restraining order to block the effect of the EO. On February 7, 2025, state attorneys general of Washington, Minnesota, and Oregon, and three physicians sued the federal government to block the EO, arguing that it violated the Equal Protection clause of the Fifth Amendment by singling out treatment of a certain group of people without legitimate government interest.

## CONCLUSION

The Trump administration’s EO sets forth new restrictions, backed by the risk of federal government enforcement action, on healthcare providers’ ability to give patients access to gender-affirming care. Providers must, however, balance the dictates of the federal EO against pre-existing state law anti-discrimination compliance obligations that

are not clearly mitigated by the EO. Participants in the healthcare industry should continue to carefully monitor these developments in order to manage statutory and regulatory compliance obligations.

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[1] *PFLAG Inc. v. Trump*, No. 1:25-cv-00337 (D. Md. March 4, 2025).

[2] *Washington v. Trump*, No. 2:25-cv-00244 (W.D. Wash. Feb. 28, 2025).

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## Authors

[Nag Young Chu](#)

[T. Reed Stephens](#)

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[Nag Young Chu](#)



[T. Reed Stephens](#)