

GOVERNOR KATIE HOBBS

# STATE OF ARIZONA

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# EXECUTIVE ORDER

Executive Order 2023-12

## Ensuring Access to Medically Necessary Gender-Affirming Healthcare

**WHEREAS**, my Administration is committed to building an Arizona for Everyone that celebrates and respects the diversity of Arizona's communities; and

**WHEREAS**, gender dysphoria is recognized as a diagnosis by the American Psychiatric Association and a growing body of medical research demonstrates that stigmatization, marginalization, and discrimination based on gender identity causes lasting physical and psychological harm; and

**WHEREAS**, all major medical, psychological, and psychiatric provider groups support gender-affirming care as a best practice in treating gender dysphoria; and

**WHEREAS**, despite a growing body of evidence confirming the importance of gender-affirming care in reducing rates of suicide, substance use, and related disorders, some states are attempting to restrict access to gender-affirming care; and

**WHEREAS**, unnecessary and scientifically unsupported restrictions on medically necessary healthcare are harmful to the health, safety, and welfare of Arizonans; and,

**WHEREAS**, the State of Arizona provides healthcare coverage to its employees and retirees through a self-funded healthcare plan administered by the Arizona Department of Administration (the "Plan"); and

**WHEREAS**, unless otherwise authorized in writing by the Plan, Covered Expenses are available to Participants only if they are medically necessary and not specifically excluded; and

**WHEREAS**, the Plan identifies "medically necessary" care as "services, supplies and prescriptions, meeting all of the following criteria:

1. Ordered by a physician;
2. Not more extensive than required to meet the basic health needs;
3. Consistent with the diagnosis of the condition for which they are being utilized;
4. Consistent in type, frequency and duration of treatment with scientifically based guidelines by the medical-scientific community in the United States of America;
5. Required for purposes other than the comfort and convenience of the patient or provider;
6. Rendered in the least intensive setting that is appropriate for their delivery; and
7. Have demonstrated medical value"; and

**WHEREAS**, since 2017, the Plan has excluded coverage for "gender reassignment surgery," (the "Exclusion"), even in cases where the surgery is medically necessary; and

**WHEREAS**, the State's Exclusion is not consistent with the coverage offered by the State's health insurance carriers' standard benefit packages, which does not include any comparable exclusion; and

**WHEREAS**, a lawsuit was filed against the State on January 23, 2019 alleging the Exclusion violates Title VII of the Civil Rights Act of 1964 and Fourteenth Amendment of the United States Constitution; and

**WHEREAS**, the United States Supreme Court held in *Bostock v. Clayton County*, 140 S.Ct. 1731 (2020) that discrimination against a person because they are transgender necessarily constitutes discrimination against that person on the basis of sex; and

**WHEREAS**, coverage of gender-affirming care is consistent with the nationwide trend and there have been successful legal challenges to exclusions of gender-affirming care in public employee healthcare plans in other states, including Alaska (*Fletcher v. Alaska*, 443 F.Supp.3d. 1024 (D. Alaska 2020)), Georgia (*Lange v. Houston County*, 608 F.Supp.3d. 1340 (M.D. Ga. 2022)), and North Carolina (*Kadel v. Folwell*, 620 F.Supp.3d 339 (M.D.N.C. 2022)); *see also* *Brandt v. Rutledge*, No. 4:21-CV-00450 (E.D. Ark. 2023) (striking down a ban on gender-affirming care for minors in Arkansas as violation of equal protection and due process); and

**WHEREAS**, the Exclusion may conflict with requirements under the federal Mental Health Parity Act to the extent that the Exclusion limits coverage for certain services associated with gender-affirming care but provides coverage for those same services in other contexts; and

**WHEREAS**, removing the Exclusion would align the State's Plan with the carriers' standard benefit package and the benefit package offered to retired State employees through the Arizona State Retirement System; and

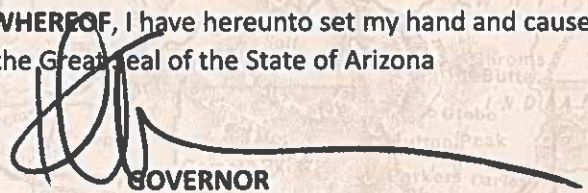
**WHEREAS**, the State healthcare plan's exclusion of gender-affirming care is contrary to the values of my Administration as expressed in Executive Order 2023-01.

**NOW, THEREFORE**, I, Katie Hobbs, Governor of the State of Arizona, by the virtue of the authority vested in me by the Arizona Constitution and the laws of this State, hereby order and direct as follows:

1. **Removal of the Exclusion.** The Department of Administration shall remove the Exclusion from the State's healthcare plan as soon as practicable and in compliance with State law.
  - a. The Department of Administration shall provide notice to the Joint Legislative Budget Committee regarding the removal of the Exclusion prior to implementation of the Plan change, as required under A.R.S. § 38-654(G).
  - b. The Department shall provide notice regarding the removal of the Exclusion to State employees who are or can be enrolled in the State healthcare plan.
2. **Restrictions on Investigative Assistance.** Unless required pursuant to a court order or Arizona or federal law, no State Agency shall provide information, data, or investigative assistance or otherwise use any State resources in furtherance of an investigation or proceeding initiated in or by another state that seeks to impose criminal or civil liability or professional sanction upon a person or entity for conduct related to providing, assisting, seeking, or obtaining gender-affirming healthcare that would not be punishable under Arizona law.

- a. Notwithstanding this provision, a State Agency may provide information or assistance or otherwise use State resources in connection with such an investigation or proceeding in response to a written request from the subject of the investigation or proceeding.
3. **Restrictions on Extraditions.** To the extent permissible under Arizona and federal law, my Administration shall decline any request from the executive authority of another state for the arrest, surrender, or extradition of any person charged with a criminal violation of a law where the alleged violation relates to the provision of, assistance with, securing of, or receipt of gender-affirming healthcare, unless the acts forming the basis of the prosecution of the crime charged would also be punishable as a criminal offense under Arizona law.
4. For the purposes of this Executive Order, the term "State Agency" shall include, without limitation, all executive departments, agencies, offices, and all State boards and commissions and any employee, officer, or other person acting on their behalf, except for: (a) any State agency that is headed by a single elected State official; (b) the Corporation Commission; and (c) any board or commission established by ballot measure during or after the November 1998 general election.
5. This Executive Order shall not confer any legal rights or remedies upon any person and shall not be used as a basis for legal challenges to any action or inaction of a State Agency, officer, employee, or agent thereof.
6. If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision or application of this Executive Order which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.
7. This Executive Order shall take effect immediately upon signature and shall remain in effect until repealed, replaced, or rescinded by future Executive Order.

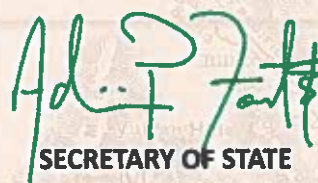
IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona



GOVERNOR

DONE at the Capitol in Phoenix on this 27th day of June in the Year Two Thousand Twenty-Three and of the independence of the United States of America the Two Hundred and Forty-Seventh.

ATTEST:



SECRETARY OF STATE

