Recent Court Actions Threaten Protections for Transgender Youth

Health Equity

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Kyle* is a 16-year-old transgender male who was seen in the Children's Hospital of Philadelphia's Gender and Sexuality Development Clinic (GSDC) after several months of debating with his family's insurance company to get authorized for evaluation by a gender specialist. When Kyle's parents first brought him to clinic, they didn't understand the complexity of their child's identity or how they could help him. After several meetings with Kyle – who was born "Kimberly" – and his family, his identity became clear. Providers, patient and parents were ready to start hormone therapy with testosterone to help him align his body with who he had always known he was on the inside.

Kyle's insurance company initially denied coverage of the prescription, but eventually reimbursed his family. However, when Kyle and his physicians decided that "top surgery" was the appropriate next step, his insurance company denied coverage – even after appeal – based on rules requiring a transgender patient to be 18 years old, even when all involved parents and medical/mental health professionals were in support.

For many families with transgender children, there is a battle at every corner. In our recent, unpublished qualitative study of provider stakeholders, providers cited transgender youth and parents' insurance coverage issues as the most common barrier in accessing necessary health care. And when transgender individuals don't receive needed medical and mental health services, rates of attempted suicide can be as high as 40 percent.

In addition to challenges accessing appropriate care, Kyle's story highlights other ways a transgender individual's health and wellbeing can be put at risk. Kyle's school told him that he would need to continue using the girl's bathroom, despite beginning the transition process, and that all school documents would still say "Kimberly" because his parents were still in the long and expensive process of legally changing his name.

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In the initial days following the 2016 presidential election, parents and families supporting transgender youth like Kyle, as well as gender non-conforming children and youth, experienced significant distress and worry. At the GSDC, we received nearly 65 calls in three days asking for assurances that the clinic would stay open, and seeking guidance on how to assure safe and healthy support for transgender youth and their families. As leaders of this important clinic, we want to ensure for our patients and families that recent gains in basic human rights and health care access for transgender individuals won't be lost.

While gender-related health care can be expensive in the short term, it is recognized to lead directly to improved health outcomes and long-term cost savings. Federal protections were set to go into effect on

January 1 of this year to ensure transgender individuals were able to access needed care and to help realize these long-term savings. Those protections would have worked to:

- Prohibit discrimination on the basis of gender identity
- Ensure health care coverage for medically necessary treatments for transgender youth, including:
  - mental and behavioral health evaluations and treatments
  - puberty blocking medications
  - gender affirming therapies, such as hormones
  - chest reconstructive surgery for the purpose of gender transition

In December, however, a Texas federal judge blocked these protections from going into effect, claiming that they incorrectly stretch existing sex discrimination laws to include gender identity. This new court ruling will only make it more difficult for many transgender individuals to access the specific medical and mental health services they need.

At the same time, there's a fight in the courts related to transgender individuals' use of public bathrooms that is also impacting students in schools. In March 2016, North Carolina passed a law requiring individuals to use public bathrooms that correspond to the sex on their birth certificate rather than their gender identity, even though there is no evidence that such a rule would result in any improvements to public health or safety. There is no record of a transgender person ever seeking to harm another person in a public bathroom, yet many transgender people actually fear for their own safety when using the bathroom. Further, as we've noted previously, this type of "bathroom policing" can have serious health consequences. When transgender youth are not allowed to use the bathroom that feels safest and most comfortable, our patients share with us unhealthy and dangerous ways of adapting that lead to disordered eating patterns, urinary tract infections or gastrointestinal distress. (In just the first two months of 2017, 14 states have introduced similar legislation to impose this rule on transgender individuals.)

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Following the passage of North Carolina's law, the U.S. Departments of Education and Justice issued a letter in May 2016 requiring schools receiving Title IX funds to support safe and non-discriminatory policies. These policies include using the student's preferred name and pronouns and allowing students to use the bathroom that aligns with their gender identity. The same federal judge in Texas, though, ruled in August to block this requirement from being enforced until it worked its way through the courts. (As you'll recall, this setback hit Kyle here in his own school where he was unable to use his name and pronoun and was required to use the girl's bathroom.)

The Obama administration appealed and, in the meantime, was scheduled for a hearing on February 14, 2017, to limit the block of these requirements to just the 13 states that were suing. The Trump administration, however, announced last week that it was dropping the request to limit the ruling and was deciding how best to proceed with the lawsuit altogether, signaling that the new administration will likely take a much different approach to protections for transgender individuals.

It is clear that in order to protect the health and wellbeing of transgender youth, and prevent the infliction of additional harm, we will continue to need multidisciplinary teams and partnerships to address issues beyond our clinic walls and build evidence for best practices. Transgender and gender non-conforming youth need all of us to let policymakers know that resources and legal protections, rather than discrimination, are needed in order for young people like Kyle to grow into happy, healthy and productive adults.

Please visit our website and read our 2016 annual update to learn more about the Gender & Sexuality Development Clinic at Children's Hospital of Philadelphia and how you can get involved in supporting our work.

*Name has been changed to maintain confidentiality.

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