

November 5, 2025

Chair Cabral-Guevara, Vice Chair Testin, and Honorable Members of the Senate Committee on Health:

On behalf of the American Civil Liberties Union of Wisconsin, first let me say thank you for the opportunity to testify this morning/afternoon. On behalf of our members, and in support the rights and privileges of Wisconsinites across the state, my team, our supporters, and I are here today to voice our deep concerns with Senate Bill 405.

It should not be controversial to say that the lives of trans people matter. The lives of trans youth matter. The lives of young people experiencing gender dysphoria matter. I am here today to offer for your consideration the proposition that these young people, like all young people, deserve safe, evidence-based healthcare. And an attack on the medical providers who provide this critical—and sometimes lifesaving—care is an attack on transgender youth and their families.

SB 405 singles out gender-affirming care by threatening providers with costly and burdensome lawsuits even when they adhere to the standard of care.

SB 405, if passed, would create a new and unusual cause of action against any provider who provides medical services relating to gender transition. The proposed law is astonishingly broad, covering not only physicians, but also psychologists, counselors, and social workers.

The bill threatens these providers with expensive lawsuits even if the provider follows widely accepted medical standards. Even if they fully comply with their ethical obligations. Even if they unfailingly adhere to the standard of care. This cannot be what we allow for trusted care providers who care for our children—especially children who, as the scientific literature puts it, come to these providers “in significant clinical distress.”

This bill is concerningly broad in other ways too. It opens providers up not just to money damages, but to punitive damages, attorney fees and costs. Somewhat shockingly, it would give individuals up until the time the minor turns *33 years old* to bring suit. In Wisconsin, the current statute of limitations for medical malpractice is 3 years. Picture yourself as a healthcare provider. Imagine the threat of being sued following you for *decades* after you treat someone.

As a lawyer, I can promise you that litigation is expensive. And this proposed legislation would open the door to a kaleidoscope of ideologically-motivated suits calculated to put providers out of business. This bill, and the increased litigation it will bring, poses two major problems.

First, make no mistake: SB 405 will increase the cost of providing care to the broader community. The cost of care for patients will go up. The cost to providers in the form of increased medical malpractice rates is also likely to increase. Second, I can also tell you with confidence that nobody likes to be sued. The sweeping threat of liability is almost certain to deter medical practice and the provision of care more broadly. And this will have real consequences for, not just trans or gender dysphoric youth, but all patients—including patients living in rural parts of our state, who are already facing widespread shortages of providers and, in particular, access to mental healthcare.

In the face of these considerations, it's important to acknowledge that there is no reason to treat the care this bill addresses any differently from all other treatment. In fact, there are *more* safeguards and more robust informed consent requirements already in place than in the majority of care that minors receive and their parents consent to.

SB 405's "Safe Harbor" provision offers potential defenses to liability, but those defenses fail to meet the realities faced by patients and providers.

I'd like to speak a bit about SB-405's "Safe Harbor" provision, which like the section imposing liability erects significant barriers for providers and patients. Providers can leverage the "Safe Harbor" section to avoid liability by meeting certain requirements. One of these requirements, in sub (1), is where the provider sees a patient and documents the need for gender-affirming care "for at least 2 continuous years," provided that the provider is checking in with the patient "throughout the 2-year period."

This just doesn't line up with the realities that most Wisconsinites live in. For many working parents, getting the time off work to make and attend appointments is incredibly difficult. And parents would be making these additional appointments not because they are medically necessary, but because they would be necessary to shield the provider from liability.

Along the same lines, to successfully raise the affirmative defense, at least 2 healthcare providers, including at least one mental health professional, would need to be involved in the treatment plan. So not only will families struggle to find a single provider to provide care, but they'd need to find a *second opinion*. These rigid rules aren't good for patients, they aren't good for providers, and they aren't good for Wisconsin.

So to conclude, I hope you'll agree with me today that trans kids matter. And because their access to healthcare does too, we respectfully oppose SB 405.

Thank you again for allowing me to testify this morning/afternoon about this important issue.