



May 12, 2023

Senator Anne Carney, Chair
Representative Matt Moonen, Chair
Committee on Judiciary
State House, Room 438
Augusta, Maine 04333

Re *LD 1735, An Act to Safeguard Gender-affirming Health Care - OTP*

Dear Senator Carney, Representative Moonen, and Members of the Committee on Judiciary

GLAD, together with the ACLU of Maine, the Maine Women's Lobby and Out Maine, strongly supports LD 1735. We thank Representative Osher, Senator Carney, Representative Milliken, Representative Moonen, Representative Salisbury, Representative Biddeford, and Representative Worth for bringing forth this timely bill.

Access to medically necessary, best-practice health care is central to the well-being of all people and communities in Maine. We appreciate the hard work of Maine health care providers to care for people across the state, through many and ongoing challenges, to keep the people of Maine healthy.

Maine, too, has a deep commitment to fairness and equality for all people, including ratification of a ballot measure in 2005 to include transgender people in our nondiscrimination laws, and to recognize transgender people are vital parts of our families and communities with respect to state identification and forms, name changes, and addressing healthcare needs. Together, we have taken thoughtful steps to include transgender people in our shared goal of building an inclusive, thriving state.¹

Through LD 1735, Maine would act to shield Maine providers, patients, and values from the threats posted by cruel and harmful actions in other states to restrict, civilly and criminally, access to transgender health care. State bans on transgender health care have been passing this year at an alarming rate.

LD 1735 signals that our state will use its resources (1) to ensure that **individuals**, not the government, are the ones making decisions about their own healthcare and well-being and (2) to ensure that patients and providers are **shielded** as much as possible from unfounded efforts to restrict or criminalize vital evidence-based health care when it is provided in Maine.

The goals of this bill are so important at this time when transgender people and their families are facing unprecedented attacks in other states, most concerningly bans on medical care. For

¹ Me Rev Stat tit 5, §§ 4571, 4581, 4591, 4595, 4601

example, Alabama enacted a law² that makes it a **felony** with a possible ten-year prison sentence for a provider, parent, or anyone who assists a young person accessing medically necessary transgender-related health care services. As of this writing, **18 states have banned access to transgender care**, including Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Iowa, Indiana, Kentucky, Mississippi, Missouri, Montana, North Dakota, Oklahoma, South Dakota, Tennessee, Utah, and West Virginia, and 16 of these bans passed in 2023 alone.³ This represents an alarming increase on the rate of attacks on transgender people and their providers.

Many states are acting to protect their residents and health care systems so that people can get the effective and sometimes life-saving care they need. On May 10, with Governor Scott's signing of H 89 / S 37, Vermont became the 15th state to enact a "shield" law to protect access to health care, patients, and providers.⁴ Those fifteen states include nine states with explicit protections for transgender health care (Vermont, Colorado, California, Massachusetts, Minnesota, New Mexico, Washington, Connecticut, and Illinois).⁵

It is important for Maine to enact a shield bill to protect providers, patients, and access to health care in our state. As *currently drafted*, this bill provides that (1) Maine court and law enforcement resources will not be used to further state bans on transgender health care that are trying to intrude into Maine and inflict civil and criminal liabilities on Maine health care providers who provide care that is legal in Maine, medically necessary for the individual, and is the established standard of care, (2) Maine courts are able to take temporary emergency jurisdiction to protect children's access to health care, and (3) Maine health care providers do not have to disclose private health information of patients in response to efforts of other states to enforce bans on health care that is legal in Maine.

Given the elimination of vital health care in a number of states, and to keep our own health care system robust, it is important that the Maine shield law be clear and comprehensive. In our view, *LD 1735 would benefit from amendments* to ensure it reflects protections evident in shield laws recently passed such as Vermont H 89. We look forward to working with the sponsor, Rep. Osher, the other sponsors and interested parties on amendments to ensure this shield law meets this dire moment, is adapted to Maine's needs, and comprehensively protects providers and patients so that Maine is shielded from the intrusion of other states' bans. Those amendments include:

- Provisions to ensure providers are not subjected to rate increases or changes in malpractice insurance coverage on the basis of providing transgender health care
- Provisions to ensure providers do not lose their Maine licenses or face discipline in Maine for providing transgender health care

² Ala. Code §§ 26-26-1 – 26-26-9. GLAD is currently challenging this ban, and it has been temporarily enjoined *Eknes-Tucker v Marshall*, No. 2:22-cv-184-LCB, 2022 U.S. Dist. LEXIS 87169 (M.D. Ala. May 13, 2022). Florida just last week passed a statutory ban on access to transgender health care, and GLAD has likewise challenged that ban *Doe et al. v Ladapo et al.*, No. 4:23cv114 (N.D. Fla. filed Mar. 23, 2023).

³ <https://www.lgbtmap.org/equality-maps/healthcare-youth-medical-care-bans>

⁴ https://legislature.vermont.gov/bill/status/2024/S_37, https://legislature.vermont.gov/bill/status/2024/H_89

⁵ <https://www.lgbtmap.org/equality-maps/healthcare/trans-shield-laws>

- Protection for the full range of providers – including doctors, physician assistants, nurses, social workers and so forth – who are involved in providing interdisciplinary transgender health care
- Protection for providers regardless of the location of the patient, ensuring that Maine providers who may care for Mainers traveling out of state or attending school out of state, are shielded from the impact of state bans
- Establish a cause of action in Maine to shield providers from abusive litigation in ban states for providing health care in Maine
- Include Maine providers in the address confidentiality program given that transgender health care providers are increasingly facing violence and threats from extremists for providing health care

The importance of action in this moment cannot be overstated. Attacks on this evidence-based standard of care is an attack on science itself as well as a cruel denial of essential medical care for a very small part of the population. We seek to keep our health care systems strong and serving people throughout the State. We hope that the Committee will vote ought to pass on this bill. Please do not hesitate to contact either of us for additional information.

Sincerely yours,
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