



[Home \(/\)](#) > [Practice \(/practice\)](#) > [Legal Issues \(/practice/legal\)](#) > [Insurance & Managed Care \(/practice/legal/managed\)](#) >

# Navigating the legal landscape: FAQs on gender affirming care for minors

A growing number of states have proposed or enacted laws regarding gender affirming care for minors. Most primarily focus on medical interventions, but some may impact services provided by behavioral health professionals.

Date created: June 28, 2024      20 min read



In recent years (2021-2024), a growing number of states have proposed or enacted a range of laws to either prohibit, significantly restrict, or protect gender affirming care (GAC) for minors. GAC typically refers to medical interventions including sex-reassignment surgery and prescribing hormone replacement therapy and puberty blockers. Thus, the professionals most impacted by such laws are physicians, nurse practitioners, physician assistants, and other medical staff who are authorized to perform gender-affirming surgery or prescribe the relevant hormones and medications.

While most state bans and limitations on GAC tend to primarily focus on medical interventions, some bans may have broader implications, or even a direct impact, on the services provided by behavioral health professionals. APA is aware of two mental health professionals (one being a psychologist) who were being targeted by complaints or investigations concerning their care of patients who received GAC.<sup>1</sup> These reports highlight the potential challenges for psychologists and their patients. These challenges also amplify situations where statutory language is vague or open to broad interpretations with potentially unintended consequences, although such challenges can even exist in states with seemingly clear, unambiguous laws.

Further complicating matters are numerous ongoing court battles challenging these GAC state laws. Litigation is often lengthy, and so it will create significant uncertainty for providers along with gender diverse and transgender minors in some states about what type of care is permissible and what may create risk under these state laws.

Within this shifting legal landscape, APA and APA Services, Inc. provide this general practical guidance to psychologists who provide services to the vulnerable population of trans minors by answering the frequently asked questions (FAQs). As an initial matter, psychologists should familiarize themselves with the GAC laws in their home state along with any relevant “shield laws,” which are laws that may offer protection for both patients and providers, that may exist in their home state. Psychologists practicing through PSYPACT and those psychologists using telehealth to serve patients across state lines should also understand the laws of the patient’s location.

Recognizing the importance of access to care for transgender, gender-diverse, and nonbinary individuals, the [APA Council of Representatives passed a resolution \(PDF, 90KB\)](#) (<https://www.apa.org/about/policy/transgender-nonbinary-inclusive-care.pdf>) in February 2024 supporting

unobstructed access to health care and evidence-based care for transgender, gender-diverse, and nonbinary children, adolescents, and adults. Furthermore, APA has [Guidelines for Psychological Practice With Transgender and Gender Nonconforming People \(PDF, 461KB\)](https://www.apa.org/practice/guidelines/transgender.pdf) (<https://www.apa.org/practice/guidelines/transgender.pdf>). Additionally, psychologists should familiarize themselves with guidance issued by federal and state agencies, their state licensing board(s), and their liability carrier.

Some frequently asked questions about providing gender affirming mental health care services to the trans community follow.

- How do these anti-GAC laws regulate care, and am I practicing in a state with such a law?
- What types of care and providers are being targeted by these anti-GAC laws and do any exceptions exist?
- What potential liability might I face due to these laws?
- What are the challenges of discussing with patients during therapy the mental health implications around GAC?
- What are considerations for psychologists providing more direct support for a patient obtaining GAC, such as providing a diagnosis or evaluation supporting gender-affirming care, or referring a patient to a medical provider for GAC medical intervention?
- Are there aspects that make specific state GAC laws or their aggressive enforcement by law enforcement more concerning to psychologists?
- Do any states specifically require mandated reporting if a practitioner has knowledge that a patient is receiving banned gender affirming care?

- What are shield laws, and may a state that bans or restricts GAC bar patients from obtaining these services in a “safe” state?
- What are considerations for psychologists providing telehealth services via PSYPACT from a “safe” state to a state that bans GAC?
- What happens if a state that restricts or bans GAC seeks from a psychologist the mental health records of a patient who received or is planning to receive such care?
- Do any of the anti-GAC laws allow for flexibility in accessing GAC?
- Should potential patient record investigations related to GAC affect my record-keeping practices when doing therapy with patients about gender issues and/or GAC?

The changing landscape in states regarding access to GAC does not change the fundamental approach to psychological care: psychologists should continue to prioritize the welfare of their patients, protect confidentiality, and ensure their patients’ safety.

## Background on GAC laws

### 1. What do these anti-GAC laws do, and am I practicing in a state with such a law?

As noted above, many states have recently enacted, or are enacting, laws restricting or banning certain aspects of GAC. For a current list of existing bans and restrictions on GAC by state, and information on legal challenges to those laws, see the [Movement Advancement Project map](https://www.lgbtmap.org/equality-maps/healthcare/youth_medical_care_bans) ([https://www.lgbtmap.org/equality-maps/healthcare/youth\\_medical\\_care\\_bans](https://www.lgbtmap.org/equality-maps/healthcare/youth_medical_care_bans)). Also, the [Human Rights Campaign Foundation](https://www.hrc.org/resources/state-maps) (<https://www.hrc.org/resources/state-maps>) along with the [ACLU](https://www.aclu.org/)

<https://www.aclu.org/issues/lgbtq-rights>) have some great resources on laws and policies that affect LGBTQ+ people. Many states have passed, or are in the process of considering, shield laws.

Most of the laws primarily target medical GAC services provided to minors (under 18); however, some laws may be interpreted more broadly, potentially limiting access to care for adults.<sup>2</sup> Each state law is different, and many of these laws are facing legal challenges, which may delay or prevent their enforcement. Since the situation is rapidly evolving, predicting how many states will ultimately enact bans or limitations for GAC is difficult.

## **2. What type of care and provider is being targeted by such laws and do any exceptions exist?**

While the anti-GAC bans vary by state, most of the laws seek to restrict access to certain medical care to minors, such as surgery, hormone therapy, and puberty blockers. Accordingly, these laws primarily target medical professionals such as physicians, nurse practitioners, physician assistants, and surgeons who perform these procedures or prescribe these medications.

Some state anti-GAC laws specifically exclude mental health services from bans. For example, Tennessee's law "does not prohibit or restrict psychological practice, the practice of professional counseling or the practice of social work." See Tennessee Code 68-33-109. Similarly, laws in Alabama, Indiana, and Oklahoma appear to safeguard the provision of mental health services to transgender minors.

Still, it is important to note that laws in certain states may have broader implications, potentially impacting other professionals involved in the care of transgender youth. Currently at least two states

(Ohio and Utah) attempt to regulate psychologists' treatment of minors with gender dysphoria. For more information, see FAQ 3.

## How anti-GAC laws may impact psychologists

This section provides an overview of the types of liabilities that may potentially arise under anti-GAC laws for psychologists who work with transgender and gender-diverse patients. This includes situations involving therapy sessions, evaluations, or other more direct support for a patient obtaining medical GAC interventions.

### 3. What potential liability might I face due to these laws?

The legal landscape surrounding GAC laws is complex and rapidly evolving. The impact of these laws on psychologists can vary significantly. In this FAQ, we discuss:

- the different ways that GAC laws reach or do not reach the actions of psychologists;
- the different types of liabilities under these laws; and
- specifics on how psychologists might face liability for their indirect support of patients getting medical GAC.

#### A. To what extent do GAC laws reach psychological services?

##### Laws carving out mental health services from GAC restrictions

Several states explicitly provide that their GAC restrictions **do not apply** to mental health services for transgender and gender-nonconforming individuals. Examples include:

- Alabama provides, “Nothing in this act shall be construed as limiting or preventing psychologists...” from providing services within their qualifications. Alabama SB184
- Tennessee’s law clarifies that the law “does not prohibit or restrict psychological practice, the practice of professional counseling or the practice of social work.” Tennessee Code 68-33-109

State laws with language like Alabama and Tennessee indicate that mental health services provided by psychologists would be unlikely to be restricted.

### **Laws targeting medical interventions or physicians**

Most GAC bans are an effort to prevent medical interventions, as expressed above. In most states, this includes surgery and prescribing hormone therapy and puberty blockers. Thus, the professionals most impacted by such laws are physicians, nurse practitioners, physician assistants, and other medical staff who are authorized to perform gender-affirming surgery or prescribe the relevant hormones and medications.

Some laws targeting medical GAC may create risks for psychologists because of their indirect involvement in GAC treatment.

As discussed in the next section, some state laws specifically banning medical GAC procedures or targeting medical providers have provisions that may create risks for psychologists alleged to have aided or encouraged the patient in obtaining medical interventions targeted by the law.

### **States restricting how psychologists provide services**

Some states attempt to regulate how psychologists treat minors with gender dysphoria by, for example, mandating specific evaluation criteria or limiting treatment options. Ohio’s law makes mental health

practitioners follow certain steps when diagnosing or treating a minor with a “gender-related condition,” which is broadly defined in the law. The law requires psychologists to screen minors for other problems before treating gender-related conditions. The law’s nonexhaustive list of screening requirements leaves uncertainty as to exactly what screening would be sufficient under the law.

## B. Types of potential liability

The following are types of liability that could be faced if a GAC law is violated:

- **Civil liability:** Many states, including Kentucky and Montana, have GAC laws that impose civil liability, such as fines or lawsuits filed by the state or individuals (such as the minor or their family) for violating the GAC law.
- **State licensing board complaints:** A handful of states label providing GAC as unprofessional conduct, which could lead to disciplinary action by a state licensing board that could arguably result in suspension or even revocation of your license to practice.
- **Criminal liability:** A small number of states have taken a more severe approach, classifying the provision of GAC services as a crime, potentially resulting in jail time or fines. States that have made the provision of GAC services a crime include North Dakota, Idaho, Oklahoma, Alabama, and Florida.

Some states have incorporated—either directly or indirectly—criminal law concepts into their anti-GAC laws.

## C. Indirect liability under GAC laws targeting medical interventions

Some states' GAC laws may create risks for psychologists working with transgender and gender diverse patients even if they are not directly involved in providing prohibited medical GAC services, but only support the patient obtaining medical GAC, for example by providing an evaluation supporting GAC.

Here's how:

**Aiding and abetting:** Some state GAC laws have explicit "aiding and abetting" language where a state may hold a psychologist responsible even if they only helped a patient receive GAC.

**Implied criminal law theories:** Even without including "aiding and abetting" language, if a state makes GAC a crime, "aiding and abetting" or "acting as an accomplice" to a crime may be an implicit component of the state's criminal law.

**Vague terms:** Some state GAC laws use unclear terms that ban such things as "inducing" or "encouraging" medical GAC without defining them. These ambiguous terms may have a similar impact as "aiding and abetting" provisions.

Any of the types of provisions noted above could be used to attempt to hold psychologists legally liable for supporting a patient's efforts to obtain prohibited GAC.

**Shield laws:** Some states are trying to protect providers and patients by enacting "shield laws" that prevent legal consequences related to GAC services. For more information on shield laws, see FAQ 8.

## 4. What are the challenges of discussing the mental health implications around GAC with patients during therapy?

Discussing the mental health implications of GAC with patients is an important part of providing comprehensive care. APA has [Guidelines for Psychological Practice with Transgender and Gender Nonconforming People \(PDF, 461KB\)](https://www.apa.org/practice/guidelines/transgender.pdf) (<https://www.apa.org/practice/guidelines/transgender.pdf>). These guidelines remain important in their emphasis on the importance of culturally competent, developmentally appropriate, and transaffirmative psychological practice with transgender and gender nonconforming individuals.

Legal concerns around therapy will depend on the applicable state's specific anti-GAC laws. In states like Ohio and Utah, which regulate how psychologists may address gender dysphoria in therapy, psychologists must be mindful of those requirements that may mandate certain evaluations, limit treatment options, or require additional provider training. Providing therapy would seem the lowest risk in states that explicitly exclude mental health services from their GAC restrictions. States that focus on regulating medical interventions only, without provisions that could be interpreted as applying indirectly to psychologists by supporting a patient's access to GAC (see FAQ 3.A), would also appear to pose a lower risk.

Mental health professionals should be familiar with informed consent requirements not only as outlined in any specific state's GAC laws (e.g. Ohio), but also in general situations where parental consent is required for mental health treatment of minors. Each state has its own legal framework around parental consent for mental health treatment of minors. To address this, therapists working with minors could consider including a specific section in their informed consent form that clarifies how they handle confidentiality with parents or guardians, especially concerning gender issues.

In any state, psychologists should remain focused on providing competent and ethical care to transgender and gender-diverse youth, while also following their state's law. Psychologists should

continue to:

- Maintain an appropriate professional role by focusing on the emotional, family, cultural, and mental health issues patients may experience when contemplating GAC.
- As always, not make or suggest GAC decisions for patients, but instead help them work through potential options to make decisions that are best for them.

Carrying out these tenets of psychological care is not only best for the patient but would also seemingly reduce the possible risk of allegations that you aided, induced, or encouraged a patient in obtaining prohibited GAC services.

## **5. What are considerations for psychologists providing more direct support for a patient obtaining GAC, such as providing a diagnosis or evaluation supporting GAC, or referring the patient to a medical provider for GAC?**

Another way psychologists may be involved in a patient's medical GAC is by providing an assessment or diagnosis for the purpose of getting the patient approved for medical GAC. This might include a diagnosis of gender dysphoria and/or an assessment that the minor is in a good mental/emotional state for making decisions around GAC.

This important work would increase your risks, especially in states with "aiding or abetting" or similar provisions creating liability for supporting a patient's effort to obtain medical GAC as discussed in FAQ 3.

Other examples of more direct engagement could include coordinating with, or referring to, a medical provider for GAC care.

Concerns about risk exposure may differ based on the state(s) in which a psychologist is licensed and practicing. The state where the patient is located determines the controlling law(s) to which the psychologists should adhere. Arguably, in states with GAC bans including “aiding and abetting” provisions, psychologists should be mindful of their legal and ethical obligations as they consider engaging in more direct support of minors obtaining GAC.

## **6. Are there certain factors that make certain state GAC laws more concerning, such as unique aspects of the GAC law itself or aggressive enforcement of the law?**

Several aspects of some state anti-GAC laws raise concerns for psychologists. Here are some key considerations about which to be aware:

**Vague language:** Some states, like Mississippi and Idaho, use ambiguous terms like “promoting” or “endorsing” GAC without clearly defining the terms. This ambiguity makes it difficult for psychologists to understand what actions might be considered a violation. Ohio’s law, for example, defines “gender-related condition” broadly, without clearly explaining the scope of the term. This raises concerns for psychologists because the law prohibits “treating a minor for a gender-related condition” without following certain steps. This makes it unclear what activities psychologists can engage in without violating the law.

**Aiding and abetting:** As discussed in FAQ 3, certain anti-GAC laws attempt to expand liability beyond those directly performing prohibited care. Such “aiding and abetting” provisions, existing in civil and

criminal state laws, raise concerns about psychologists being targets even when not directly providing medical care involving surgery or prescriptions.

**Out-of-state GAC:** Some GAC bans, like that of Iowa, appear to only target medical GAC procedures performed by in-state medical professionals. Therefore, if a psychologist provided an evaluation supporting a patient's pursuit of GAC in a "safe" state, this activity would presumably not be covered by the ban. However, other states, such as Idaho, do not specify whether the banned care must be performed in the state, raising the question about whether the state legislature is attempting to restrict activities supporting patients seeking GAC out-of-state where such care is legal. See FAQ 9 for more information about serving patients across state lines.

### **Aggressive prosecutors and attorneys general**

The above legal concerns are heightened when prosecutors and attorneys general state their intentions to aggressively enforce anti-GAC laws in ways that could potentially create a chilling effect on psychologists who provide, or seek to provide, care for transgender or gender diverse individuals. Limited legal guidance exists on how courts will approach these laws, including how they will interpret vague terms and apply "aiding and abetting" provisions.

APA is closely monitoring not only court challenges to both antiabortion and anti-GAC state laws, but also interpretations and guidance issued by state agencies and attorneys general in anticipation that a comprehensive approach may emerge that will provide relevant guidance for psychologists.

## **7. Do any states specifically require mandated reporting if a practitioner has knowledge that a patient is receiving banned**

## gender affirming care?

At the time of publication, no GAC law specifically mandates that a psychologist report that a patient has sought or obtained prohibited GAC procedures. Nor do any current laws define GAC as child abuse to trigger mandatory abuse reporting. APA is closely monitoring whether any state attempts to require mandatory reporting in connection with GAC.

### **8. What are shield laws and may a state that bans or restricts GAC bar patients from obtaining these services in a “safe” state?**

Many states have taken steps to create safe havens through “shield laws” for transgender children, their families, and their doctors. Shield laws aim to create a “safe haven” for individuals and health care providers by “shielding” them from extradition, civil lawsuits, investigations, and professional discipline based on activities related to GAC that are legal in the state where the care is received or provided. Like shield laws for abortion, the approach of states with GAC shield laws is generally to thwart a state’s efforts to penalize those providing, facilitating, or receiving gender-affirming treatments in states where that care for children is legal, and to protect in-state providers.

For example, Illinois’ Gender Affirming Healthcare Equity Act prohibits state agencies from cooperating with out-of-state GAC investigations or arrests because GAC is legal in Illinois. New York has also passed protective legislation that includes prohibiting local law enforcement from cooperating with requests from other states pursuing individuals who have received or provided legal GAC in New York.

While shield laws may protect psychologists from legal investigations, depending on the specific facts and circumstances, such laws do not guarantee protection from state licensing board investigations or PSYPACT-related procedures by the PSYPACT Commission.

## **To what extent may a state that bans GAC services control the provision of GAC treatment in a safe state?**

Generally, a state's jurisdiction to control activities is confined to its own territory. Accordingly, a state cannot directly prohibit, regulate, or punish individuals for providing or receiving GAC in another state where it is legal. This issue, however, becomes more nuanced when considering "aiding and abetting" activities in a banned state such as if a psychologist in a banned state diagnoses, assesses, or refers a patient to a GAC provider in a different state where such GAC is legal. If the GAC ban includes an aiding and abetting component, a state may try to hold the psychologist accountable, arguing that the aiding and abetting is the prohibited conduct in the banned state.

Like the legal landscape surrounding antiabortion state laws, the extent to which a state may enforce bans against patients obtaining GAC in safe states remains uncharted. APA is monitoring the situation as it unfolds.

## **9. What are considerations for psychologists providing telehealth services via PSYPACT from a state with no restrictions to a state that bans GAC?**

When serving patients across state lines by telehealth under PSYPACT or temporary practice provisions, psychologists should understand the law where the patient is located. The PSYPACT Commission has stipulated that under PSYPACT the state where the patient is located could impose its requirements regarding public health, safety, and welfare on the practicing out-of-state psychologist.<sup>3</sup> Since most state anti-GAC bans assert health and safety concerns for minors, a state might argue that the GAC ban applies to the state where the minor patient is located and could conceivably file a complaint against the psychologist with the PSYPACT Commission.

The regulatory boards for the individual PSYPACT member states have the power to revoke a psychologist's Authority to Practice Interjurisdictional Telepsychology (APIT) within that state, if the board deems such revocation is necessary to protect the health and safety of the citizens within a state.<sup>4</sup> This adverse action would be reported to the PSYPACT Commission, which would notify other PSYPACT member states and affect your ability to practice via PSYPACT in those states as well. Arguably, such a revocation would not just apply to the state that complained, but in all PSYPACT states.

As noted above, while state shield laws may protect psychologists from discovery by prosecutors and other investigators in certain situations, such laws may not necessarily protect psychologists from state licensing board investigations or PSYPACT-related procedures by the PSYPACT Commission.

## **10. What happens if a state that restricts or bans gender affirming care seeks mental health records from a psychologist concerning a patient who received or is planning to receive GAC?**

Generally, patient records or information may be handed over in response to a subpoena with patient consent only. In most states, there is a psychotherapist-patient privilege. In response to court orders seeking patient records or information, a psychologist may be able to assert the privilege because it could provide grounds for not divulging the patient's information. You are also strongly encouraged to contact your malpractice carrier. We also suggest that you contact your SPTA, especially in the unlikely event that a prosecutor or investigator is able to obtain a court order directing you to produce patient information despite the privilege (if it exists in your state).

## **11. Do any of the laws make exceptions or allow for any flexibility in accessing GAC?**

Several laws include exceptions including for minors with early onset puberty or a verifiable disorder of sex development. A few states, such as Florida, Missouri, Montana, North Carolina, among others, grandfathered in individuals already receiving gender-affirming treatments so they may continue their care without interruption. However, most of these exceptions are limited. In South Dakota, minors with existing hormone prescriptions before July 1, 2023, were allowed to continue receiving treatment through the end of 2023—with the expectation that medical providers “systematically reduce[d]” their prescriptions over that period.

## **12. Should any of the concerns expressed above related to mandatory reporting and patient record investigations affect my record-keeping practices when providing therapy with patients about gender issues and GAC?**

While maintaining accurate and detailed records is often important for patient care, legal situations, and quality assurance, the current climate of mandatory reporting concerns and potential investigations related to GAC can create a dilemma for psychologists regarding record-keeping practices when discussing gender issues with patients, especially if there is a risk of the patient’s records being sought by a state authority with an anti-GAC law.

As with other situations where a patient may be put at risk by the psychologist putting certain details in their record, you should consider the potential impact on patients of your describing in the record discussions with them about gender issues. Currently, the risk of patient records being obtained by state prosecutors, attorneys general, or licensing boards is unpredictable. Patients might be hesitant to disclose sensitive information about seeking GAC or related issues if they fear that such information in their records could be accessed by third parties. This, in turn, could hinder the therapeutic process.

Keeping only essential information in the records might minimize the potential for investigations or legal challenges, especially in states with restrictive GAC laws.

At the same time, complying with state and federal record-keeping is essential. Remember to discuss your record-keeping practices and any potential mandatory reporting with your patients.

For more information about anti-GAC state legislation and litigation, contact the [Office of Legal and State Advocacy \(mailto:spracticelegalandregulatory@apa.org\)](mailto:spracticelegalandregulatory@apa.org).

---

**Legal disclaimer:** Legal issues are complex and depend on the applicable state law(s) and the factual circumstances presented. The information in these FAQs does not constitute, is not intended to constitute, and should not be relied upon as, legal advice. APA and APA Services, Inc. encourage you to seek legal advice from a lawyer with appropriate expertise in this area of the law who is licensed to practice in your state.

---

### Footnotes

<sup>1</sup> We only have details concerning the psychologist. This psychologist received a board complaint from a state with a GAC ban, for providing evaluation letters supporting a patient's GAC. The complaint was later dismissed because she was not licensed or practicing in that state.

<sup>2</sup> While most of these laws do not explicitly target transgender adults, the chilling effect of these laws could limit access to care for adults as well. Moreover, some states are enacting broader laws that seek to limit access to care for transgender adults.

<sup>3</sup> Association of State and Provincial Psychology Boards (ASPPB). (n.d.). PSYPACT: Psychology Interjurisdictional Compact. Retrieved from <https://psypact.org/page/governance> (<https://psypact.org/page/governance>)

<sup>4</sup> See PSYPACT Commission. (2023). Rule 7: Rule on Adverse Action. Retrieved from [https://cdn.ymaws.com/psypact.site-ym.com/resource/resmgr/Rule\\_7\\_Rule\\_on\\_Adverse\\_Actio.pdf](https://cdn.ymaws.com/psypact.site-ym.com/resource/resmgr/Rule_7_Rule_on_Adverse_Actio.pdf) (PDF, 230KB) ([https://cdn.ymaws.com/psypact.site-ym.com/resource/resmgr/Rule\\_7\\_Rule\\_on\\_Adverse\\_Actio.pdf](https://cdn.ymaws.com/psypact.site-ym.com/resource/resmgr/Rule_7_Rule_on_Adverse_Actio.pdf))

---

### Find this article at:

<https://www.apaservices.org/practice/legal/managed/legal-landscape-gender-care-minors>