

Rising malpractice premiums price small clinics out of gender-affirming care for minors

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After Iowa lawmakers passed a ban on gender-affirming care for minors in March, managers of an LGBTQ+ health clinic located just across the state line in Moline, Illinois, decided to start offering that care.

The added services would provide care to patients who live in largely rural eastern Iowa, including some of the hundreds previously treated at a University of Iowa clinic, saving them half-day drives to clinics in

larger cities like Chicago and Minneapolis.

By June, The Project of the Quad Cities, as the Illinois clinic is called, had hired a provider who specializes in transgender health care. So, Andy Rowe, The Project's health care operations director, called the clinic's insurance broker to see about getting the new provider added to the nonprofit's [malpractice](#) policy.

"I didn't anticipate that it was going to be a big deal," Rowe said. Then the insurance carriers' quotes came. The first one specifically excluded gender-affirming care for minors. The next response was the same. And the one after that. By early November, more than a dozen malpractice insurers had declined to offer the clinic a policy.

Rowe didn't know it at the time, but he wasn't alone in his frustrating quest.

Nearly half the states have banned medication or surgical treatment for transgender youth. Independent clinics and medical practices located in states where such care is either allowed or protected have moved to fill that void for patients commuting or relocating across state lines. But as the risk of litigation rises for clinics, obtaining malpractice insurance on the commercial marketplace has become a quiet barrier to offering care, even in states with legal protections for health care for trans people.

In extreme cases, lawmakers have deployed malpractice insurance regulations against gender-affirming care in states where courts have slowed or blocked anti-trans legislation.

Five months after starting his search for malpractice insurance, Rowe said, he received a quote for a policy that would allow The Project to treat trans youth. That's when he realized finding a policy was only the first hurdle. He expected the coverage to cost \$8,000 to \$10,000 a year,

but he was quoted \$50,000.

Rowe said he hadn't experienced anything like it in his 20 years working in health care administration.

Insurance industry advocates argue that higher premiums are justified because the rise in legislation surrounding gender-affirming care for minors means clinics are at increased risk of being sued.

"If state laws increase the risk of civil liability for health professionals, premiums will be adjusted accordingly and appropriately to reflect the level of financial risk incurred by the insured," Mike Stinson, vice president of public policy and legal affairs at the Medical Professional Liability Association, an insurance trade association, said in an emailed statement. If [state laws](#) make an activity illegal, then insurance will not cover it at all, he said.

Only a few states have passed laws preventing malpractice insurers from treating gender-affirming care differently than other care. Massachusetts was the first, when lawmakers there passed legislation that says insurers could not increase rates for health care providers for offering services that are illegal in other states.

Since then, five other states have passed laws requiring malpractice insurers to treat gender-affirming [health care](#) as they do any other legally protected health activity: Colorado, Vermont, New York, Oregon, and California (similar legislation is pending in Hawaii).

"This was a preventative measure, and it was met with full acceptance by both the insured and the insurers," said Vermont state Sen. Virginia "Ginny" Lyons, a Democrat who co-sponsored the state's law. She said lawmakers consulted with both physicians and malpractice insurance companies to make sure the language was accurate. Insurers just wanted

to be able to clearly assess the risk, she said.

Lyons said she hadn't heard of any providers in Vermont who had trouble with their malpractice insurance before the law was enacted, but she was concerned politics might get in the way of doctors' ability to offer care. In March 2022, The Texas Tribune reported that one Texas doctor had stopped offering care because his malpractice provider had stopped covering hormone therapy for minors.

Lawmakers in some states have gone further and revised malpractice provisions to restrict access to gender-affirming care, often while bans on offering that care to trans youth are stalled in court. In 2021, Arkansas became the first state to ban gender-affirming care for trans children. When that ban was held up in court last year, the governor signed a new law allowing anyone who received gender-affirming care as a minor to file a malpractice lawsuit up to 15 years after they turn 18.

Similar laws followed in Tennessee, Florida, and Missouri, all extending the statute of limitations on filing a malpractice claim anywhere from 15 to 30 years. (Another was introduced but not passed in Texas that would have stretched the statute of limitations to the length of the patient's life.) Typically, malpractice suits must be filed within one to three years of injury.

The civil liability that those laws created has forced at least one clinic to stop offering some treatments. The Washington University Transgender Center in Missouri said the law subjected the clinic to "unacceptable level of liability."

Alejandra Caraballo, a civil rights attorney and clinical instructor at the Harvard Law School Cyberlaw Clinic, said there has been "a concerted effort on the part of anti-trans activists to utilize malpractice insurance as a means of eliminating care."

She likens the strategy to laws that have long targeted abortion providers by increasing "legal liability to chill a certain type of conduct."

Anti-trans activists have drawn attention to a small number of "detransitioners," who have filed lawsuits against the doctors who provided them with gender-affirming care, she said. She believes those lawsuits, filed in such states as California, Nebraska, and North Carolina, will be used to lobby for longer statutes of limitations and to create the perception that liability for providers is increasing.

For independent clinics, like The Project in the Quad Cities, and small [medical practices](#) that purchase their malpractice insurance on the commercial marketplace, those tactics are restricting their ability to offer care. Many providers of gender-affirming care are protected from rising premiums such as health centers that receive federal funding, which are covered under the Federal Tort Claims Act, or academic medical centers and Planned Parenthood clinics, which are self-insured. But a small number of independent clinics have been priced out.

In Albuquerque, New Mexico, a state that, like Illinois, has protected access to gender-affirming care, family medicine physician Anjali Taneja said the clinic where she works is running into the same trouble getting coverage.

Casa de Salud, where Taneja is the executive director, has provided gender-affirming care to adults for years, but when the clinic decided to start offering that care to younger patients, insurers wouldn't issue a malpractice policy. The clinic was quoted "double what we paid a few years ago," just to cover the gender-affirming care it offers to adults, Taneja said.

The red tape both Casa de Salud and The Project are encountering has prevented treatment for patients. When Iowa's ban on gender-affirming

care took effect Sept. 1, officials at The Project had hoped to offer services to the transgender youth who previously sought care an hour west at the University of Iowa's LGBTQ Clinic. Instead, Rowe said, patients are making the difficult decision between going without treatment or commuting four hours to Chicago or Minneapolis.

After months of fundraising, The Project has almost enough money to pay for the \$50,000 malpractice policy. But, Rowe said, "it's a tough swallow."

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