Federal Trade Commission Workshop Addresses Healthcare Provider Deceptive Trade Practices in Provision of Gender-Affirming Care

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On July 9, 2025, the Federal Trade Commission (FTC) hosted a workshop focused on perceived "dangers" arising from unfair or deceptive trade practices in marketing a variety of healthcare services falling under the label of "gender-affirming care" (GAC) for minors. Medical professionals, patients, parents, attorneys, and others shared their perspectives on the intersection between consumer protection under the authority of the FTC and the provision of GAC. Following the workshop, the FTC issued a public request for information on July 27, 2025. The deadline for submitting comments was September 26, 2025.

Although ostensibly following a format similar to previous FTC workshops on "hot" issues, in this instance, the workshop presented a clear shift in FTC approach and also appears to indicate a new area of enforcement priority. Given the breadth of medical therapies and interventions that may fall under the broad label of GAC, including standard mental health support services such as counseling, businesses marketing healthcare services to minors should be aware of the FTC's new focus on this topic.

What Constitutes "Gender Affirming Care"?

According to the World Health Organization, GAC encompasses a broad range of social, psychological, behavioral, and medical interventions "designed to support and affirm an individual's gender identity" when it conflicts with the gender they were assigned at birth. These interventions generally run along a continuum and may include anything from counseling to changes in social expression to medications (such as hormone therapy). While GAC may also encompass surgery for

adults, this is rarely provided to children under the age of 18, for obvious developmental reasons.

GAC for minors, and hormone therapy in particular, is a controversial topic. In recent years, a growing number of state lawmakers have enacted or considered laws to prohibit certain gender-affirming treatments for minors, and/or to impose penalties on health care professionals who provide it. There has also been litigation aimed at blocking some of these laws, including actions taken by medical organizations and trade groups, who argue that extensive scientific evidence exists to support the same therapies that the laws seek to block. The issue and the legislation related to it remain embroiled in the courts, and little is settled.

The Federal Trade Commission's Authority to Review Healthcare Marketing Claims

Section 5 of the Federal Trade Commission Act (FTC Act)[1] gives the FTC broad authority to protect consumers from unfair or deceptive acts or practices. Historically, however, the FTC limited its review of healthcare marketing claims. Although the FTC has always required competent and reliable scientific evidence (C&RSE) to support safety and efficacy claims in the context of health products, for the most part, it has limited its review in the field to dietary supplements.

The focus with respect to these claims changed somewhat in the past few years, following the issuance of important new guidance on health-related claims at the end of 2022, when the FTC released its Health Products Compliance Guidance.[2] Intended to provide greater clarity to advertisers making health-related claims, the new Guidance document applied to all health products, not just dietary supplements. It also confirmed that randomized, controlled trials (RCTs) are generally required to support health-related claims; offered new, specific and detailed recommendations related to the reliability of studies submitted in support of health-related claims; provided more than 50 examples to guide advertisers in the space; and expanded on prior guidance in a number of additional ways. Indeed, the new Guidance indicated that health-related marketing claims were to be an increased priority for the Commission. Since the issuance of the new Guidance in 2022, the FTC has taken enforcement action against individuals and companies that have engaged in deceptive practices in connection with, inter alia, the marketing of addiction treatment services, cancer treatment services, weight loss products and services, COVID-19 treatment and prevention products and services, brain health supplements, stem cell therapy, CBD products, essential oils, health insurance plans, and vision correction products.

The FTC's Workshop Investigating the "Dangers" of GAC

The FTC's workshop on July 9, 2025, presented a completely new area of inquiry for the Commission, and appeared to build on positions taken primarily by activists thoroughly opposed to any healthcare characterized as GAC, a fact that was fairly evident from the title of the program. Although FTC Chairman Andrew N. Ferguson stated in his opening remarks that the workshop was "not about politics," he followed that statement up immediately with multiple criticisms of the prior administration, so the political nature of the event was clear. Mr. Ferguson outlined the FTC's perspective on what constitutes a deceptive trade act or practice, and addressed that the FTC's authority could be implicated if there is evidence that medical professionals or others omitted warnings about the risks associated with GAC for minors, or made false or unsupported claims about the benefits and effectiveness of GAC for minors. Mr. Ferguson maintained that the FTC's review is necessary when it comes to GAC, in order to protect parents and

children and "ensure that everyone can make an informed choice about their own path to healing."

Nonetheless, the featured speakers on the opening panel presented only one side of the debate, with a series of consumers sharing critical and distressing stories about failed treatments, so-called "terrifying choices," and medical interventions with "permanent and irreversible" negative effects. Moreover, Mr. Ferguson's comments and the opening panel were immediately followed by a presentation from Dr. Miriam Grossman, a conservative, anti-LGBT activist who is well known for, among other things, her opposition to sex education in schools, promotion of conversion therapy for gay people, and involvement with organizations that oppose abortion and marriage equality. Dr. Grossman took the position during the FTC's workshop that "the vocabulary of gender affirming care" itself is a violation of the FTC Act, while the use of preferred pronouns is "fraud." Although the FTC Chairman fell short of officially endorsing Dr. Grossman's opinions, the Chairman's attorney advisor, Annie Chiang, spoke with approval about Dr. Grossman's comments, praising her for "pull[ing] back the curtain" on the type of "fraudulent" records and "misrepresentation[s]" used to support GAC.

Throughout the day, additional speakers presented similar negative views towards GAC and the tenor of the workshop was focused primarily on negative outcomes and patient and parent regrets. There were no opinions or research offered that were supportive of GAC and no patients shared positive outcomes or stories. Several prominent healthcare systems and research universities were criticized for their practices, but none of these institutions were invited to explain their services or defend their practitioners or care. Overall, the workshop seemed intended to set the stage for future enforcement action.

During remarks, Melissa Holyoak, FTC Commissioner, stated that the FTC's role in this space is to "protect children from deceptive statements regarding such treatments." She outlined three principal reasons as to why the FTC should use its authority to combat "unfair or deceptive practices related to [GAC]" that included: (1) FTC's history of enforcement actions against unfair and deceptive healthcare related claims; (2) the "significant and evolving changes and protocols for treating gender dysphoria"; and, (3) a prioritization of enforcement against unfair deceptive practices that present potential of serious harm to children.

When expanding on the first point, she noted "[t]he FTC does not regulate the practice of medicine. The FTC cannot make policy decisions limiting sex transition treatments for minors. What the FTC can and should do is protect children from deceptive statements regarding such treatments. The FTC has previously enforced and will continue to enforce against deceptive representations made by medical practitioners, including claims of connection for treatments for transgender children."

Additionally, Commissioner Holyoak noted that claims about health benefits require substantiation in the form of "competent and reliable scientific evidence," from which she distinguished independent practitioners' experience and advisories from medical organizations. In her words, experience and medical organizations' advisories are unreliable, as "those are based on best currently available evidence rather than a causal link between the recommended course of action and the health benefit."

In remarks following Commissioner Holyoak, Chad Mizelle, Department of Justice (DOJ) Chief of Staff, noted that the FTC has a very broad mandate, and a consumer protection mandate specifically, with powerful investigative tools attached that are well-positioned to root out fraud. With respect to civil and criminal fraud, Mizelle noted while exact details of their targets are not yet public, nearly 20 subpoenas have been issued against clinics that have provided GAC. Additionally, Mizelle

noted that DOJ is investigating violations such as healthcare fraud and false statements, all which could result in either civil or criminal liability for these clinics and for those engaged in the provision of GAC. Mizelle also provided that DOJ is currently undergoing investigations into hospitals and other providers related to fraudulent billing and false claims under Medicaid fraud in the False Claims Act.[3] He mentioned that DOJ has also issued subpoenas to major manufacturers of the drugs used in GAC-related medical interventions for possible violations of drug marketing laws and the federal Food, Drug, and Cosmetics Act.[4] Finally, he emphasized that they are working with Congress to revise existing criminal laws related to female gender mutilation to "to more robustly protect children from the chemical and surgical mutilation."

In the last panel, panelists discussed various enforcement actions that the FTC could choose to use in the future against those who engage in the unfair or deceptive acts or practices of concern. Finally, Mark R. Meador, an FTC Commissioner, concluded the workshop with discussions surrounding how the FTC plans to act on its authority to combat unfair or deceptive practices related to GAC.

Key Takeaways for Healthcare Providers

Given the tenor of this workshop, health care stakeholders need to be aware that the FTC is likely to pursue enforcement in the future against providers of GAC to minors. Specifically, the FTC may pursue civil penalties, rulemaking or injunctions to ensure stakeholders do not pursue what the FTC or other agencies may consider deceptive or untruthful marketing to consumers. The scope of therapies and treatments falling within the FTC's enforcement parameters may be very broad, given the positive comments made with regard to speakers who characterized the mere use of GAC "vocabulary" as a deceptive practice potentially in violation of the law. Furthermore, even providers that do not expressly hold themselves out as offering or specializing in GAC could find themselves under scrutiny if their marketing materials employ terminology that the Commission now finds objectionable, or if they offer services to minors that could broadly be considered as falling under the GAC umbrella, such as counseling. Although the FTC is soliciting feedback on this issue, stakeholders in the health care space should be aware of potential enforcement actions and class actions in the future. The FTC has provided a video and transcript of the workshop on its website.[5]

Endnotes

1. 15 U.S.C. § 45.
2. *https://www.ftc.gov/system/files/ftc_gov/pdf/Health-Products-Compliance-Guidance.pdf*.
3. 31 U.S.C. §§ 3729 – 3733.
4. 21 U.S.C. ch. 9 § 301 *et seq*.
5. *https://www.ftc.gov/news-events/events/2025/07/dangers-gender-affirming-care-minors*.

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